

CUBAN LIBERTY AND DEMOCRATIC SOLIDARITY
(LIBERTAD) ACT OF 1995

JULY 24, 1995.—Ordered to be printed

Mr. GILMAN, from the Committee on International Relations,
submitted the following

R E P O R T

together with

MINORITY VIEWS

[To accompany H.R. 927]

[Including cost estimate of the Congressional Budget Office]

The Committee on International Relations, to whom was referred the bill (H.R. 927) to seek international sanctions against the Castro government in Cuba, to plan for support of a transition government leading to a democratically elected government in Cuba, and for other purposes, having considered the same, report favorably thereon with an amendment and recommend that the bill as amended do pass.

The amendment is as follows:

Strike out all after the enacting clause and insert in lieu thereof the following:

SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

(a) **SHORT TITLE.**—This Act may be cited as the “Cuban Liberty and Democratic Solidarity (LIBERTAD) Act of 1995”.

(b) **TABLE OF CONTENTS.**—The table of contents of this Act is as follows:

- Sec. 1. Short title; table of contents.
- Sec. 2. Findings.
- Sec. 3. Purposes.
- Sec. 4. Definitions.

TITLE I—SEEKING SANCTIONS AGAINST THE CASTRO GOVERNMENT

- Sec. 101. Statement of policy.
- Sec. 102. Enforcement of the economic embargo of Cuba.
- Sec. 103. Prohibition against indirect financing of the Castro dictatorship.
- Sec. 104. United States opposition to Cuban membership in international financial institutions.
- Sec. 105. United States opposition to ending the suspension of the Government of Cuba from the Organization of American States.

- Sec. 106. Assistance by the Independent States of the former Soviet Union for the Cuban government.
- Sec. 107. Television broadcasting to Cuba.
- Sec. 108. Reports on assistance and commerce received by Cuba from other foreign countries.
- Sec. 109. Importation safeguard against certain Cuban products.
- Sec. 110. Authorization of support for democratic and human rights groups and international observers.
- Sec. 111. Withholding of foreign assistance from countries supporting nuclear plant in Cuba.
- Sec. 112. Expulsion of criminals from Cuba.

TITLE II—ASSISTANCE TO A FREE AND INDEPENDENT CUBA

- Sec. 201. Policy toward a transition government and a democratically elected government in Cuba.
- Sec. 202. Authorization of assistance for the Cuban people.
- Sec. 203. Coordination of assistance program; implementation and reports to Congress; reprogramming.
- Sec. 204. Authorization of appropriations.
- Sec. 205. Termination of the economic embargo of Cuba.
- Sec. 206. Requirements for a transition government.
- Sec. 207. Requirements for a democratically elected government.

TITLE III—PROTECTION OF PROPERTY RIGHTS OF UNITED STATES NATIONALS AGAINST CONFISCATORY TAKINGS BY THE CASTRO REGIME

- Sec. 301. Statement of policy.
- Sec. 302. Liability for trafficking in property confiscated from United States nationals.
- Sec. 303. Determination of claims to confiscated property.
- Sec. 304. Exclusivity of Foreign Claims Settlement Commission certification procedure.

TITLE IV—EXCLUSION OF CERTAIN ALIENS

- Sec. 401. Exclusion from the United States of aliens who have confiscated property of United States nationals or who traffic in such property.

SEC. 2. FINDINGS.

The Congress makes the following findings:

(1) The economy of Cuba has experienced a decline of at least 60 percent in the last 5 years as a result of—

(A) the end of its subsidization by the former Soviet Union of between 5 billion and 6 billion dollars annually;

(B) 36 years of Communist tyranny and economic mismanagement by the Castro government;

(C) the extreme decline in trade between Cuba and the countries of the former Soviet bloc; and

(D) the stated policy of the Russian Government and the countries of the former Soviet bloc to conduct economic relations with Cuba on strictly commercial terms.

(2) At the same time, the welfare and health of the Cuban people have substantially deteriorated as a result of this economic decline and the refusal of the Castro regime to permit free and fair democratic elections in Cuba.

(3) The Castro regime has made it abundantly clear that it will not engage in any substantive political reforms that would lead to democracy, a market economy, or an economic recovery.

(4) The repression of the Cuban people, including a ban on free and fair democratic elections, and continuing violations of fundamental human rights have isolated the Cuban regime as the only completely nondemocratic government in the Western Hemisphere.

(5) As long as free elections are not held in Cuba, the economic condition of the country and the welfare of the Cuban people will not improve in any significant way.

(6) The totalitarian nature of the Castro regime has deprived the Cuban people of any peaceful means to improve their condition and has led thousands of Cuban citizens to risk or lose their lives in dangerous attempts to escape from Cuba to freedom.

(7) Radio Marti and Television Marti have both been effective vehicles for providing the people of Cuba with news and information and have helped to bolster the morale of the people of Cuba living under tyranny.

(8) The consistent policy of the United States towards Cuba since the beginning of the Castro regime, carried out by both Democratic and Republican administrations, has sought to keep faith with the people of Cuba, and has been effective in sanctioning the totalitarian Castro regime.

(9) The United States has shown a deep commitment, and considers it a moral obligation, to promote and protect human rights and fundamental freedoms as expressed in the Charter of the United Nations and in the Universal Declaration of Human Rights.

(10) The Congress has historically and consistently manifested its solidarity and the solidarity of the American people with the democratic aspirations of the Cuban people.

(11) The Cuban Democracy Act of 1992 calls upon the President to encourage the governments of countries that conduct trade with Cuba to restrict their

trade and credit relations with Cuba in a manner consistent with the purposes of that Act.

(12) The 1992 FREEDOM Support Act requires that the President, in providing economic assistance to Russia and the emerging Eurasian democracies, take into account the extent to which they are acting to "terminate support for the communist regime in Cuba, including removal of troops, closing military facilities, and ceasing trade subsidies and economic, nuclear, and other assistance".

(13) The Cuban government engages in the illegal international narcotics trade and harbors fugitives from justice in the United States.

(14) The Castro government threatens international peace and security by engaging in acts of armed subversion and terrorism such as the training and supplying of groups dedicated to international violence.

(15) The Castro government has utilized from its inception and continues to utilize torture in various forms (including by psychiatry), as well as execution, exile, confiscation, political imprisonment, and other forms of terror and repression, as means of retaining power.

(16) Fidel Castro has defined democratic pluralism as "pluralistic garbage" and continues to make clear that he has no intention of tolerating the democratization of Cuban society.

(17) The Castro government holds innocent Cubans hostage in Cuba by no fault of the hostages themselves solely because relatives have escaped the country.

(18) Although a signatory state to the 1928 Inter-American Convention on Asylum and the International Covenant on Civil and Political Rights (which protects the right to leave one's own country), Cuba nevertheless surrounds embassies in its capital by armed forces to thwart the right of its citizens to seek asylum and systematically denies that right to the Cuban people, punishing them by imprisonment for seeking to leave the country and killing them for attempting to do so (as demonstrated in the case of the confirmed murder of over 40 men, women, and children who were seeking to leave Cuba on July 13, 1994).

(19) The Castro government continues to utilize blackmail, such as the immigration crisis with which it threatened the United States in the summer of 1994, and other unacceptable and illegal forms of conduct to influence the actions of sovereign states in the Western Hemisphere in violation of the Charter of the Organization of American States and other international agreements and international law.

(20) The United Nations Commission on Human Rights has repeatedly reported on the unacceptable human rights situation in Cuba and has taken the extraordinary step of appointing a Special Rapporteur.

(21) The Cuban government has consistently refused access to the Special Rapporteur and formally expressed its decision not to "implement so much as one comma" of the United Nations Resolutions appointing the Rapporteur.

(22) The United Nations General Assembly passed Resolution 1992/70 on December 4, 1992, Resolution 1993/48/142 on December 20, 1993, and Resolution 1994/49/544 on October 19, 1994, referencing the Special Rapporteur's reports to the United Nations and condemning "violations of human rights and fundamental freedoms" in Cuba.

(23) Article 39 of Chapter VII of the United Nations Charter provides that the United Nations Security Council "shall determine the existence of any threat to the peace, breach of the peace, or act of aggression and shall make recommendations, or decide what measures shall be taken . . . , to maintain or restore international peace and security."

(24) The United Nations has determined that massive and systematic violations of human rights may constitute a "threat to peace" under Article 39 and has imposed sanctions due to such violations of human rights in the cases of Rhodesia, South Africa, Iraq, and the former Yugoslavia.

(25) In the case of Haiti, a neighbor of Cuba not as close to the United States as Cuba, the United States led an effort to obtain and did obtain a United Nations Security Council embargo and blockade against that country due to the existence of a military dictatorship in power less than 3 years.

(26) United Nations Security Council Resolution 940 of July 31, 1994, subsequently authorized the use of "all necessary means" to restore the "democratically elected government of Haiti", and the democratically elected government of Haiti was restored to power on October 15, 1994.

(27) The Cuban people deserve to be assisted in a decisive manner to end the tyranny that has oppressed them for 36 years and the continued failure to do so constitutes ethically improper conduct by the international community.

(28) For the past 36 years, the Cuban government has posed and continues to pose a national security threat to the United States.

SEC. 3. PURPOSES.

The purposes of this Act are as follows:

- (1) To assist the Cuban people in regaining their freedom and prosperity, as well as in joining the community of democracies that are flourishing in the Western Hemisphere.
- (2) To seek international sanctions against the Castro government in Cuba.
- (3) To encourage the holding of free and fair democratic elections in Cuba, conducted under the supervision of internationally recognized observers.
- (4) To develop a plan for furnishing assistance to a transition government and, subsequently, to a democratically elected government when such governments meet the eligibility requirements of this Act.
- (5) To protect property rights abroad of United States nationals.
- (6) To provide for the continued national security of the United States in the face of continuing threats from the Castro government of terrorism, theft of property from United States nationals, and domestic repression from which refugees flee to United States shores.

SEC. 4. DEFINITIONS.

As used in this Act, the following terms have the following meanings:

- (1) APPROPRIATE CONGRESSIONAL COMMITTEES.—The term “appropriate congressional committees” means the Committee on International Relations and the Committee on Appropriations of the House of Representatives and the Committee on Foreign Relations and the Committee on Appropriations of the Senate.
- (2) COMMERCIAL ACTIVITY.—The term “commercial activity” has the meaning given that term in section 1603(d) of title 28, United States Code.
- (3) CONFISCATED.—As used in titles I and III, the term “confiscated” refers to—
 - (A) the nationalization, expropriation, or other seizure by the Cuban government of ownership or control of property, on or after January 1, 1959—
 - (i) without the property having been returned or adequate and effective compensation provided; or
 - (ii) without the claim to the property having been settled pursuant to an international claims settlement agreement or other mutually accepted settlement procedure; and
 - (B) the repudiation by the Cuban government of, the default by the Cuban government on, or the failure by the Cuban government to pay, on or after January 1, 1959—
 - (i) a debt of any enterprise which has been nationalized, expropriated, or otherwise taken by the Cuban government;
 - (ii) a debt which is a charge on property nationalized, expropriated, or otherwise taken by the Cuban government; or
 - (iii) a debt which was incurred by the Cuban government in satisfaction or settlement of a confiscated property claim.
- (4) CUBAN GOVERNMENT.—(A) The term “Cuban government” includes the government of any political subdivision of Cuba, and any agency or instrumentality of the Government of Cuba.
(B) For purposes of subparagraph (A), the term “agency or instrumentality of the Government of Cuba” means an agency or instrumentality of a foreign state as defined in section 1603(b) of title 28, United States Code, with “Cuba” substituted for “a foreign state” each place it appears in such section.
- (5) DEMOCRATICALLY ELECTED GOVERNMENT IN CUBA.—The term “democratically elected government in Cuba” means a government determined by the President to have met the requirements of section 207.
- (6) ECONOMIC EMBARGO OF CUBA.—The term “economic embargo of Cuba” refers to the economic embargo imposed against Cuba pursuant to section 620(a) of the Foreign Assistance Act of 1961 (22 U.S.C. 2370(a)), section 5(b) of the Trading With the Enemy Act (50 U.S.C. App. 5(b)), the International Emergency Economic Powers Act (50 U.S.C. 1701 and following), and the Export Administration Act of 1979 (50 U.S.C. App. 2401 and following), as modified by the Cuban Democracy Act of 1992 (22 U.S.C. 6001 and following).
- (7) FOREIGN NATIONAL.—The term “foreign national” means—
 - (A) an alien; or
 - (B) any corporation, trust, partnership, or other juridical entity not organized under the laws of the United States, or of any State, the District of

Columbia, the Commonwealth of Puerto Rico, or any other territory or possession of the United States.

(8) KNOWINGLY.—The term “knowingly” means with knowledge or having reason to know.

(9) PROPERTY.—(A) The term “property” means any property (including patents, copyrights, trademarks, and any other form of intellectual property), whether real, personal, or mixed, and any present, future, or contingent right, security, or other interest therein, including any leasehold interest.

(B) For purposes of title III of this Act, the term “property” shall not include real property used for residential purposes unless, as of the date of the enactment of this Act—

(i) the claim to the property is owned by a United States national and the claim has been certified under title V of the International Claims Settlement Act of 1949; or

(ii) the property is occupied by a member or official of the Cuban government or the ruling political party in Cuba.

(10) TRAFFICS.—(A) As used in title III, a person or entity “traffics” in property if that person or entity knowingly and intentionally—

(i) sells, transfers, distributes, dispenses, brokers, manages, or otherwise disposes of confiscated property, or purchases, leases, receives, possesses, obtains control of, manages, uses, or otherwise acquires or holds an interest in confiscated property,

(ii) engages in a commercial activity using or otherwise benefiting from confiscated property, or

(iii) causes, directs, participates in, or profits from, trafficking (as described in clauses (i) and (ii)) by another person, or otherwise engages in trafficking (as described in clauses (i) and (ii)) through another person,

without the authorization of the United States national who holds a claim to the property.

(B) The term “traffics” does not include—

(i) the delivery of international telecommunication signals to Cuba that are authorized by section 1705(e) of the Cuban Democracy Act of 1992 (22 U.S.C. 6004(e)); or

(ii) the trading or holding of securities publicly traded or held, unless the trading is with or by a person determined by the Secretary of the Treasury to be a specially designated national.

(11) TRANSITION GOVERNMENT IN CUBA.—The term “transition government in Cuba” means a government determined by the President to have met the requirements of section 206.

(12) UNITED STATES NATIONAL.—The term “United States national” means—

(A) any United States citizen; or

(B) any other legal entity which is organized under the laws of the United States, or of any State, the District of Columbia, the Commonwealth of Puerto Rico, or any other territory or possession of the United States, and which has its principal place of business in the United States.

TITLE I—SEEKING SANCTIONS AGAINST THE CASTRO GOVERNMENT

SEC. 101. STATEMENT OF POLICY.

It is the sense of the Congress that—

(1) the acts of the Castro government, including its massive, systematic, and extraordinary violations of human rights, are a threat to international peace;

(2) the President should advocate, and should instruct the United States Permanent Representative to the United Nations to propose and seek, within the Security Council, a mandatory international embargo against the totalitarian Cuban government pursuant to chapter VII of the Charter of the United Nations, which is similar to measures taken by United States representatives with respect to Haiti; and

(3) any resumption or commencement of efforts by any state to make operational the nuclear facility at Cienfuegos, Cuba, will have a detrimental impact on United States assistance to and relations with that state.

SEC. 102. ENFORCEMENT OF THE ECONOMIC EMBARGO OF CUBA.

(a) **POLICY.**—(1) The Congress hereby reaffirms section 1704(a) of the Cuban Democracy Act of 1992 that states the President should encourage foreign countries to restrict trade and credit relations with Cuba.

(2) The Congress further urges the President to take immediate steps to apply the sanctions described in section 1704(b) of that Act against countries assisting Cuba.

(b) **DIPLOMATIC EFFORTS.**—The Secretary of State shall ensure that United States diplomatic personnel abroad understand and, in their contacts with foreign officials, are communicating the reasons for the United States economic embargo of Cuba, and are urging foreign governments to cooperate more effectively with the embargo.

(c) **EXISTING REGULATIONS.**—The President should instruct the Secretary of the Treasury and the Attorney General to enforce fully the Cuban Assets Control Regulations set forth in part 515 of title 31, Code of Federal Regulations.

(d) **TRADING WITH THE ENEMY ACT.**—

(1) **CIVIL PENALTIES.**—Subsection (b) of section 16 of the Trading With the Enemy Act (50 U.S.C. App. 16(b)) is amended to read as follows:

“(b)(1) A civil penalty of not to exceed \$50,000 may be imposed by the Secretary of the Treasury on any person who violates any license, order, rule, or regulation issued in compliance with the provisions of this Act.

“(2) Any property, funds, securities, papers, or other articles or documents, or any vessel, together with its tackle, apparel, furniture, and equipment, that is the subject of a violation under paragraph (1) shall, at the discretion of the Secretary of the Treasury, be forfeited to the United States Government.

“(3) The penalties provided under this subsection may not be imposed for—

“(A) news gathering, research, or the export or import of, or transmission of, information or informational materials; or

“(B) clearly defined educational or religious activities, or activities of recognized human rights organizations, that are reasonably limited in frequency, duration, and number of participants.

“(4) The penalties provided under this subsection may be imposed only on the record after opportunity for an agency hearing in accordance with sections 554 through 557 of title 5, United States Code, with the right to prehearing discovery.

“(5) Judicial review of any penalty imposed under this subsection may be had to the extent provided in section 702 of title 5, United States Code.”.

(2) **FORFEITURE OF PROPERTY USED IN VIOLATION.**—Section 16 of the Trading With the Enemy Act is further amended by striking subsection (c).

(3) **CLERICAL AMENDMENT.**—Section 16 of the Trading With the Enemy Act is further amended by inserting “SEC. 16.” before “(a)”.

(e) **COVERAGE OF DEBT-FOR-EQUITY SWAPS BY ECONOMIC EMBARGO OF CUBA.**—Section 1704(b)(2) of the Cuban Democracy Act of 1992 (22 U.S.C. 6003(b)(2)) is amended—

(1) by striking “and” at the end of subparagraph (A);

(2) by redesignating subparagraph (B) as subparagraph (C); and

(3) by inserting after subparagraph (A) the following new subparagraph:

“(B) includes an exchange, reduction, or forgiveness of Cuban debt owed to a foreign country in return for a grant of an equity interest in a property, investment, or operation of the Government of Cuba (including the government of any political subdivision of Cuba, and any agency or instrumentality of the Government of Cuba) or of a Cuban national; and”;

(4) by adding at the end the following flush sentence:

“As used in this paragraph, the term ‘agency or instrumentality of the Government of Cuba’ means an agency or instrumentality of a foreign state as defined in section 1603(b) of title 28, United States Code, with ‘Cuba’ substituted for ‘a foreign state’ each place it appears in such section.”.

SEC. 103. PROHIBITION AGAINST INDIRECT FINANCING OF THE CASTRO DICTATORSHIP.

(a) **PROHIBITION.**—Notwithstanding any other provision of law, no loan, credit, or other financing may be extended knowingly by a United States national, permanent resident alien, or United States agency, to a foreign national, United States national, or permanent resident alien, in order to finance transactions involving any confiscated property the claim to which is owned by a United States national as of the date of the enactment of this Act.

(b) **TERMINATION OF PROHIBITION.**—The prohibition of subsection (a) shall cease to apply on the date on which the economic embargo of Cuba terminates under section 205.

(c) **PENALTIES.**—Violations of subsection (a) shall be punishable by the same penalties as are applicable to violations of the Cuban Assets Control Regulations set forth in part 515 of title 31, Code of Federal Regulations.

(d) DEFINITIONS.—As used in this section—

(1) the term “permanent resident alien” means an alien admitted for permanent residence into the United States; and

(2) the term “United States agency” has the meaning given the term “agency” in section 551(1) of title 5, United States Code.

SEC. 104. UNITED STATES OPPOSITION TO CUBAN MEMBERSHIP IN INTERNATIONAL FINANCIAL INSTITUTIONS.

(a) CONTINUED OPPOSITION TO CUBAN MEMBERSHIP IN INTERNATIONAL FINANCIAL INSTITUTIONS.—(1) Except as provided in paragraph (2), the Secretary of the Treasury shall instruct the United States executive director to each international financial institution to use the voice and vote of the United States to oppose the admission of Cuba as a member of that institution until the President submits a determination under section 203(c)(3) that a democratically elected government in Cuba is in power.

(2) Once the President submits a determination under section 203(c)(1) that a transition government in Cuba is in power, the President is encouraged to take steps to support the processing of Cuba’s application for membership in any international financial institution, subject to the membership taking effect after a democratically elected government in Cuba is in power.

(b) REDUCTION IN UNITED STATES PAYMENTS TO INTERNATIONAL FINANCIAL INSTITUTIONS.—If any international financial institution approves a loan or other assistance to the Cuban government over the opposition of the United States, then the Secretary of the Treasury shall withhold from payment to that institution an amount equal to the amount of the loan or other assistance to the Cuban government, with respect to each of the following types of payment:

(1) The paid-in portion of the increase in capital stock of the institution.

(2) The callable portion of the increase in capital stock of the institution.

(c) DEFINITION.—For purposes of this section, the term “international financial institution” means the International Monetary Fund, the International Bank for Reconstruction and Development, the International Development Association, the International Finance Corporation, the Multilateral Investment Guaranty Agency, and the Inter-American Development Bank.

SEC. 105. UNITED STATES OPPOSITION TO ENDING THE SUSPENSION OF THE GOVERNMENT OF CUBA FROM THE ORGANIZATION OF AMERICAN STATES.

The President should instruct the United States Permanent Representative to the Organization of American States to use the voice and vote of the United States to oppose ending the suspension of the Government of Cuba from the Organization until the President determines under section 203(c)(3) that a democratically elected government in Cuba is in power.

SEC. 106. ASSISTANCE BY THE INDEPENDENT STATES OF THE FORMER SOVIET UNION FOR THE CUBAN GOVERNMENT.

(a) REPORTING REQUIREMENT.—Not later than 90 days after the date of the enactment of this Act, the President shall submit to the appropriate congressional committees a report detailing progress towards the withdrawal of personnel of any independent state of the former Soviet Union (within the meaning of section 3 of the FREEDOM Support Act (22 U.S.C. 5801)), including advisers, technicians, and military personnel, from the Cienfuegos nuclear facility in Cuba.

(b) CRITERIA FOR ASSISTANCE.—Section 498A(a)(11) of the Foreign Assistance Act of 1961 (22 U.S.C. 2295a(a)(11)) is amended by striking “of military facilities” and inserting “military and intelligence facilities, including the military and intelligence facilities at Lourdes and Cienfuegos”.

(c) INELIGIBILITY FOR ASSISTANCE.—(1) Section 498A(b) of that Act (22 U.S.C. 2295a(b)) is amended—

(A) by striking “or” at the end of paragraph (4);

(B) by redesignating paragraph (5) as paragraph (6); and

(C) by inserting after paragraph (4) the following:

“(5) for the government of any independent state effective 30 days after the President has determined and certified to the appropriate congressional committees (and Congress has not enacted legislation disapproving the determination within that 30-day period) that such government is providing assistance for, or engaging in nonmarket based trade (as defined in section 498B(k)(3)) with, the Cuban government; or”.

(2) Subsection (k) of section 498B of that Act (22 U.S.C. 2295b(k)), is amended by adding at the end the following:

“(3) NONMARKET BASED TRADE.—As used in section 498A(b)(5), the term ‘nonmarket based trade’ includes exports, imports, exchanges, or other arrange-

ments that are provided for goods and services (including oil and other petroleum products) on terms more favorable than those generally available in applicable markets or for comparable commodities, including—

“(A) exports to the Cuban government on terms that involve a grant, concessional price, guaranty, insurance, or subsidy;

“(B) imports from the Cuban government at preferential tariff rates;

“(C) exchange arrangements that include advance delivery of commodities, arrangements in which the Cuban government is not held accountable for unfulfilled exchange contracts, and arrangements under which Cuba does not pay appropriate transportation, insurance, or finance costs; and

“(D) the exchange, reduction, or forgiveness of Cuban debt in return for a grant by the Cuban government of an equity interest in a property, investment, or operation of the Cuban government or of a Cuban national.

“(4) CUBAN GOVERNMENT.—(A) The term ‘Cuban government’ includes the government of any political subdivision of Cuba, and any agency or instrumentality of the Government of Cuba.

“(B) For purposes of subparagraph (A), the term ‘agency or instrumentality of the Government of Cuba’ means an agency or instrumentality of a foreign state as defined in section 1603(b) of title 28, United States Code, with ‘Cuba’ substituted for ‘a foreign state’ each place it appears in such section.”.

(d) FACILITIES AT LOURDES, CUBA.—(1) The Congress expresses its strong disapproval of the extension by Russia of credits equivalent to approximately \$200,000,000 in support of the intelligence facility at Lourdes, Cuba, in November 1994.

(2) Section 498A of the Foreign Assistance Act of 1961 (22 U.S.C. 2295a) is amended by adding at the end the following new subsection:

“(d) REDUCTION IN ASSISTANCE FOR SUPPORT OF INTELLIGENCE FACILITIES IN CUBA.—(1) Notwithstanding any other provision of law, the President shall withhold from assistance provided, on or after the date of the enactment of this subsection, for an independent state of the former Soviet Union under this chapter an amount equal to the sum of assistance and credits, if any, provided on or after such date by such state in support of intelligence facilities in Cuba, including the intelligence facility at Lourdes, Cuba.

“(2)(A) The President may waive the requirement of paragraph (1) to withhold assistance if the President certifies to the appropriate congressional committees that the provision of such assistance is important to the national security of the United States, and, in the case of such a certification made with respect to Russia, if the President certifies that the Russian Government has assured the United States Government that the Russian Government is not sharing intelligence data collected at the Lourdes facility with officials or agents of the Cuban Government.

“(B) At the time of a certification made with respect to Russia pursuant to subparagraph (A), the President shall also submit to the appropriate congressional committees a report describing the intelligence activities of Russia in Cuba, including the purposes for which the Lourdes facility is used by the Russian Government and the extent to which the Russian Government provides payment or government credits to the Cuban Government for the continued use of the Lourdes facility.

“(C) The report required by subparagraph (B) may be submitted in classified form.

“(D) For purposes of this paragraph, the term ‘appropriate congressional committees’ includes the Permanent Select Committee on Intelligence of the House of Representatives and the Select Committee on Intelligence of the Senate.

“(3) The requirement of paragraph (1) to withhold assistance shall not apply with respect to—

“(A) assistance to meet urgent humanitarian needs, including disaster and refugee relief;

“(B) democratic political reform and rule of law activities;

“(C) technical assistance for safety upgrades of civilian nuclear power plants;

“(D) the creation of private sector and nongovernmental organizations that are independent of government control;

“(E) the development of a free market economic system; and

“(F) assistance for the purposes described in the Cooperative Threat Reduction Act of 1993 (title XII of Public Law 103–160).”.

SEC. 107. TELEVISION BROADCASTING TO CUBA.

(a) CONVERSION TO UHF.—The Director of the United States Information Agency shall implement a conversion of television broadcasting to Cuba under the Television Marti Service to ultra high frequency (UHF) broadcasting.

(b) PERIODIC REPORTS.—Not later than 45 days after the date of the enactment of this Act, and every three months thereafter until the conversion described in sub-

section (a) is fully implemented, the Director of the United States Information Agency shall submit a report to the appropriate congressional committees on the progress made in carrying out subsection (a).

(c) **TERMINATION OF BROADCASTING AUTHORITIES.**—Upon transmittal of a determination under section 203(c)(3), the Television Broadcasting to Cuba Act (22 U.S.C. 1465aa and following) and the Radio Broadcasting to Cuba Act (22 U.S.C. 1465 and following) are repealed.

SEC. 108. REPORTS ON ASSISTANCE AND COMMERCE RECEIVED BY CUBA FROM OTHER FOREIGN COUNTRIES.

(a) **REPORTS REQUIRED.**—Not later than 90 days after the date of the enactment of this Act, and every year thereafter, the President shall submit a report to the appropriate congressional committees on assistance and commerce received by Cuba from other foreign countries during the preceding 12-month period.

(b) **CONTENTS OF REPORTS.**—Each report required by subsection (a) shall, for the period covered by the report, contain the following, to the extent such information is known:

(1) A description of all bilateral assistance provided to Cuba by other foreign countries, including humanitarian assistance.

(2) A description of Cuba's commerce with foreign countries, including an identification of Cuba's trading partners and the extent of such trade.

(3) A description of the joint ventures completed, or under consideration, by foreign nationals involving facilities in Cuba, including an identification of the location of the facilities involved and a description of the terms of agreement of the joint ventures and the names of the parties that are involved.

(4) A determination whether or not any of the facilities described in paragraph (3) is the subject of a claim by a United States national.

(5) A determination of the amount of Cuban debt owed to each foreign country, including—

(A) the amount of debt exchanged, forgiven, or reduced under the terms of each investment or operation in Cuba involving foreign nationals; and

(B) the amount of debt owed to the foreign country that has been exchanged, reduced, or forgiven in return for a grant by the Cuban government of an equity interest in a property, investment, or operation of the Cuban government or of a Cuban national.

(6) A description of the steps taken to ensure that raw materials and semi-finished or finished goods produced by facilities in Cuba involving foreign nationals do not enter the United States market, either directly or through third countries or parties.

(7) An identification of countries that purchase, or have purchased, arms or military supplies from the Cuban government or that otherwise have entered into agreements with the Cuban government that have a military application, including—

(A) a description of the military supplies, equipment, or other materiel sold, bartered, or exchanged between the Cuban government and such countries;

(B) a listing of the goods, services, credits, or other consideration received by the Cuban government in exchange for military supplies, equipment, or materiel; and

(C) the terms or conditions of any such agreement.

SEC. 109. IMPORTATION SAFEGUARD AGAINST CERTAIN CUBAN PRODUCTS.

(a) **STATEMENT OF POLICY.**—

(1) The Congress reaffirms section 515.204 of title 31, Code of Federal Regulations, that prohibits the importation of and dealings in merchandise outside the United States that—

(A) is of Cuban origin,

(B) is or has been located in or transported from or through Cuba, or

(C) is made or derived in whole or in part from any article which is the growth, produce, or manufacture of Cuba.

(2) The Congress reaffirms that United States accession to the North American Free Trade Agreement does not modify or alter the United States sanctions against Cuba, noting that the statement of administrative action accompanying that trade agreement specifically states the following:

(A) "The NAFTA rules of origin will not in any way diminish the Cuban sanctions program . . . Nothing in the NAFTA would operate to override this prohibition."

(B) "Article 309(3) [of the NAFTA] permits the United States to ensure that Cuban products or goods made from Cuban materials are not imported

into the United States from Mexico or Canada and that United States products are not exported to Cuba through those countries.”.

(3) The Congress notes that section 902(c) the Food Security Act of 1985 (Public Law 99–198) required the President not to allocate any of the sugar import quota to a country that is a net importer of sugar unless that country can verify to the President that any imports of sugar produced in Cuba are not reexported to the United States.

(4) Protection of essential security interests of the United States requires enhanced assurances that sugar products imported into the United States are not products of Cuba.

(b) IN GENERAL.—(1) Notwithstanding any other provision of law, no sugar or sugar product shall enter or be imported into the United States unless the exporter of the sugar or sugar product to the United States has certified, to the satisfaction of the Secretary of the Treasury, that the sugar or sugar product is not a product of Cuba.

(2) If the exporter described in paragraph (1) is not the producer of the sugar or sugar product, the exporter may certify the origin of the sugar or sugar product on the basis of—

(A) its reasonable reliance on the producer's written representations as to the origin of the sugar or sugar product; or

(B) a certification of the origin of the sugar or sugar product by its producer, that is voluntarily provided to the exporter by the producer.

(c) CERTIFICATION.—The Secretary of the Treasury shall prescribe the form, content, and manner of submission of the certification (including documentation) required in connection with the entry or importation into the United States of sugar or sugar products, in order to ensure the strict enforcement of this section. Such certification shall be in a form sufficient to satisfy the Secretary that the exporter has taken steps to ensure that it is not exporting to the United States sugar or sugar products that are a product of Cuba.

(d) PENALTIES.—

(1) UNLAWFUL ACTS.—It is unlawful to—

(A) enter or import into the United States any product or article if such importation is prohibited under subsection (b), or

(B) make a false certification under subsection (c).

(2) FORFEITURE.—Any person or entity that violates paragraph (1) shall forfeit to the United States—

(A) in the case of a violation of paragraph (1)(A), the goods imported or entered in violation of paragraph (1)(A), and

(B) in the case of a violation of paragraph (1)(B), the goods imported or entered pursuant to the false certification that is the subject of the violation.

(3) ENFORCEMENT.—The Customs Service may exercise the authorities it has under sections 581 through 641 of the Tariff Act of 1930 (19 U.S.C. 1581 through 1641) in order to carry out paragraph (2).

(e) REPORTS TO CONGRESS.—The Secretary of the Treasury shall report to the Congress on any unlawful acts and penalties imposed under subsection (d).

(f) PUBLICATION OF LISTS OF VIOLATORS.—(1) The Secretary of the Treasury shall publish in the Federal Register, not later than March 31 and September 30 of each year, a list containing the name of any person or entity located outside the customs territory of the United States whose acts result in a violation of paragraph (1)(A) of subsection (d) or who violate paragraph (1)(B) of subsection (d).

(2) Any person or entity whose name has been included in a list published under paragraph (1) may petition the Secretary to be removed from such list. If the Secretary finds that such person or entity has not committed any violations described in paragraph (1) for a period of not less than 1 year after the date on which the name of the person or entity was so published, the Secretary shall remove such person from the list as of the next publication of the list under paragraph (1).

(g) DEFINITIONS.—For purposes of this section:

(1) ENTER, IMPORT, ETC.—The terms “entry”, “enter or be imported”, “import”, and “importation” into the United States mean entered, or withdrawn from warehouse for consumption, in the customs territory of the United States.

(2) PRODUCT OF CUBA.—The term “product of Cuba” means a product that—

(A) is of Cuban origin,

(B) is or has been located in or transported from or through Cuba, or

(C) is made or derived in whole or in part from any article which is the growth, produce, or manufacture of Cuba.

(3) SUGAR, SUGAR PRODUCT.—The terms “sugar” and “sugar product” mean sugars, syrups, molasses, or products with sugar content in excess of 35 percent.

SEC. 110. AUTHORIZATION OF SUPPORT FOR DEMOCRATIC AND HUMAN RIGHTS GROUPS AND INTERNATIONAL OBSERVERS.

(a) **AUTHORIZATION.**—Notwithstanding any other provision of law, except for section 634A of the Foreign Assistance Act of 1961 (22 U.S.C. 2394-1) and comparable notification requirements contained in any Act making appropriations for foreign operations, export financing, and related programs, the President is authorized to furnish assistance and provide other support for individuals and independent non-governmental organizations to support democracy-building efforts for Cuba, including the following:

(1) Published and informational matter, such as books, videos, and cassettes, on transitions to democracy, human rights, and market economies, to be made available to independent democratic groups in Cuba.

(2) Humanitarian assistance to victims of political repression, and their families.

(3) Support for democratic and human rights groups in Cuba.

(4) Support for visits and permanent deployment of independent international human rights monitors in Cuba.

(b) **OAS EMERGENCY FUND.**—(1) The President shall take the necessary steps to encourage the Organization of American States to create a special emergency fund for the explicit purpose of deploying human rights observers, election support, and election observation in Cuba.

(2) The President should instruct the United States Permanent Representative to the Organization of American States to encourage other member states of the Organization to join in calling for the Cuban government to allow the immediate deployment of independent human rights monitors of the Organization throughout Cuba and on-site visits to Cuba by the Inter-American Commission on Human Rights.

(3) Notwithstanding section 307 of the Foreign Assistance Act of 1961 (22 U.S.C. 2227) or any other provision of law limiting the United States proportionate share of assistance to Cuba by any international organization, the President should provide not less than \$5,000,000 of the voluntary contributions of the United States to the Organization of American States as of the date of the enactment of this Act solely for the purposes of the special fund referred to in paragraph (1).

SEC. 111. WITHHOLDING OF FOREIGN ASSISTANCE FROM COUNTRIES SUPPORTING NUCLEAR PLANT IN CUBA.

(a) **FINDINGS.**—The Congress makes the following findings:

(1) President Clinton stated in April 1993 that “the United States opposes the construction of the Juragua nuclear power plant because of our concerns about Cuba’s ability to ensure the safe operation of the facility and because of Cuba’s refusal to sign the Nuclear Non-Proliferation Treaty or ratify the Treaty of Tlatelolco.”

(2) Cuba has not signed the Treaty on the Non-Proliferation of Nuclear Weapons or ratified the Treaty of Tlatelolco, the latter of which establishes Latin America and the Caribbean as a nuclear weapons-free zone.

(3) The State Department, the Nuclear Regulatory Commission, and the Department of Energy have expressed concerns about the construction and operation of Cuba’s nuclear reactors.

(4) In a September 1992 report to Congress, the General Accounting Office outlined concerns among nuclear energy experts about deficiencies in the nuclear plant project in Juragua, near Cienfuegos, Cuba, including—

(A) a lack in Cuba of a nuclear regulatory structure;

(B) the absence in Cuba of an adequate infrastructure to ensure the plant’s safe operation and requisite maintenance;

(C) the inadequacy of training of plant operators;

(D) reports by a former technician from Cuba who, by examining with x-rays weld sites believed to be part of the auxiliary plumbing system for the plant, found that 10 to 15 percent of those sites were defective;

(E) since September 5, 1992, when construction on the plant was halted, the prolonged exposure to the elements, including corrosive salt water vapor, of the primary reactor components; and

(F) the possible inadequacy of the upper portion of the reactors’ dome retention capability to withstand only 7 pounds of pressure per square inch, given that normal atmospheric pressure is 32 pounds per square inch and United States reactors are designed to accommodate pressures of 50 pounds per square inch.

(5) The United States Geological Survey claims that it had difficulty determining answers to specific questions regarding earthquake activity in the area

near Cienfuegos because the Cuban government was not forthcoming with information.

(6) The Geological Survey has indicated that the Caribbean plate, a geological formation near the south coast of Cuba, may pose seismic risks to Cuba and the site of the power plant, and may produce large to moderate earthquakes.

(7) On May 25, 1992, the Caribbean plate produced an earthquake numbering 7.0 on the Richter scale.

(8) According to a study by the National Oceanic and Atmospheric Administration, summer winds could carry radioactive pollutants from a nuclear accident at the power plant throughout all of Florida and parts of the States on the gulf coast as far as Texas, and northern winds could carry the pollutants as far northeast as Virginia and Washington, D.C.

(9) The Cuban government, under dictator Fidel Castro, in 1962 advocated the Soviets' launching of nuclear missiles to the United States, which represented a direct and dangerous provocation of the United States and brought the world to the brink of a nuclear conflict.

(10) Fidel Castro over the years has consistently issued threats against the United States Government, most recently that he would unleash another perilous mass migration from Cuba upon the enactment of this Act.

(11) Despite the various concerns about the plant's safety and operational problems, a feasibility study is being conducted that would establish a support group to include Russia, Cuba, and third countries with the objective of completing and operating the plant.

(b) WITHHOLDING OF FOREIGN ASSISTANCE.—

(1) IN GENERAL.—Notwithstanding any other provision of law, the President shall withhold from assistance allocated, on or after the date of the enactment of this Act, for any country an amount equal to the sum of assistance and credits, if any, provided on or after such date of enactment by that country or any entity in that country in support of the completion of the Cuban nuclear facility at Juragua, near Cienfuegos, Cuba.

(2) EXCEPTIONS.—The requirement of paragraph (1) to withhold assistance shall not apply with respect to—

(A) assistance to meet urgent humanitarian needs, including disaster and refugee relief;

(B) democratic political reform and rule of law activities;

(C) the creation of private sector and nongovernmental organizations that are independent of government control;

(D) the development of a free market economic system; and

(E) assistance for the purposes described in the Cooperative Threat Reduction Act of 1993 (title XII of Public Law 103–160).

(3) DEFINITION.—As used in paragraph (1), the term “assistance” means assistance under the Foreign Assistance Act of 1961, credits, sales, and guarantees of extensions of credit under the Arms Export Control Act, assistance under titles I and III of the Agricultural Trade Development and Assistance Act of 1954, assistance under the FREEDOM Support Act of 1992, and any other program of assistance or credits provided by the United States to other countries under other provisions of law, except that the term “assistance” does not include humanitarian assistance, including disaster relief assistance.

SEC. 112. EXPULSION OF CRIMINALS FROM CUBA.

The President shall instruct all United States Government officials who engage in official conduct with the Cuban government to raise on a regular basis the extradition of or rendering to the United States all persons residing in Cuba who are sought by the United States Department of Justice for crimes committed in the United States.

TITLE II—ASSISTANCE TO A FREE AND INDEPENDENT CUBA

SEC. 201. POLICY TOWARD A TRANSITION GOVERNMENT AND A DEMOCRATICALLY ELECTED GOVERNMENT IN CUBA.

The policy of the United States is as follows:

(1) To support the self-determination of the Cuban people.

(2) To recognize that the self-determination of the Cuban people is a sovereign and national right of the citizens of Cuba which must be exercised free of interference by the government of any other country.

(3) To encourage the Cuban people to empower themselves with a government which reflects the self-determination of the Cuban people.

(4) To recognize the potential for a difficult transition from the current regime in Cuba that may result from the initiatives taken by the Cuban people for self-determination in response to the intransigence of the Castro regime in not allowing any substantive political or economic reforms, and to be prepared to provide the Cuban people with humanitarian, developmental, and other economic assistance.

(5) In solidarity with the Cuban people, to provide appropriate forms of assistance—

(A) to a transition government in Cuba;

(B) to facilitate the rapid movement from such a transition government to a democratically elected government in Cuba that results from an expression of the self-determination of the Cuban people; and

(C) to support such a democratically elected government.

(6) Through such assistance, to facilitate a peaceful transition to representative democracy and a market economy in Cuba and to consolidate democracy in Cuba.

(7) To deliver such assistance to the Cuban people only through a transition government in Cuba, through a democratically elected government in Cuba, through United States Government organizations, or through United States, international, or indigenous nongovernmental organizations.

(8) To encourage other countries and multilateral organizations to provide similar assistance, and to work cooperatively with such countries and organizations to coordinate such assistance.

(9) To ensure that appropriate assistance is rapidly provided and distributed to the people of Cuba upon the institution of a transition government in Cuba.

(10) Not to provide favorable treatment or influence on behalf of any individual or entity in the selection by the Cuban people of their future government.

(11) To assist a transition government in Cuba and a democratically elected government in Cuba to prepare the Cuban military forces for an appropriate role in a democracy.

(12) To be prepared to enter into negotiations with a democratically elected government in Cuba either to return the United States Naval Base at Guantanamo to Cuba or to renegotiate the present agreement under mutually agreeable terms.

(13) To consider the restoration of diplomatic recognition and support the reintegration of the Cuban government into Inter-American organizations when the President determines that there exists a democratically elected government in Cuba.

(14) To take steps to remove the economic embargo of Cuba when the President determines that a transition to a democratically elected government in Cuba has begun.

(15) To assist a democratically elected government in Cuba to strengthen and stabilize its national currency.

(16) To pursue the extension of free trade arrangements to a free, democratic, and independent Cuba or to seek the creation of an economic community with a free, democratic, and independent Cuba.

SEC. 202. AUTHORIZATION OF ASSISTANCE FOR THE CUBAN PEOPLE.

(a) AUTHORIZATION.—

(1) IN GENERAL.—The President shall develop a plan for providing economic assistance to Cuba at such time as the President determines that a transition government or a democratically elected government in Cuba (as determined under section 203(c)) is in power.

(2) EFFECT ON OTHER LAWS.—Assistance may be provided under this section notwithstanding any other provision of law, except for—

(A) this Act;

(B) section 620(a)(2) of the Foreign Assistance Act of 1961 (22 U.S.C. 2370(a)(2)); and

(C) section 634A of the Foreign Assistance Act of 1961 (22 U.S.C. 2394–1) and comparable notification requirements contained in any Act making appropriations for foreign operations, export financing, and related programs.

(b) PLAN FOR ASSISTANCE.—

(1) DEVELOPMENT OF PLAN.—The President shall develop a plan for providing assistance under this section—

(A) to Cuba when a transition government in Cuba is in power; and

(B) to Cuba when a democratically elected government in Cuba is in power.

(2) TYPES OF ASSISTANCE.—Assistance under the plan developed under paragraph (1) shall include the following:

(A) TRANSITION GOVERNMENT.—(i) Except as provided in clause (ii), assistance to Cuba under a transition government shall be limited to—

(I) such food, medicine, medical supplies and equipment, and assistance to meet emergency energy needs, as is necessary to meet the basic human needs of the Cuban people; and

(II) assistance described in subparagraph (C).

(ii) Assistance to a transition government in Cuba may include assistance for activities comparable to those set forth in section 498 of the Foreign Assistance Act of 1961 (22 U.S.C. 2295) (other than paragraph (9) of such section).

(iii) Only after a transition government in Cuba is in power, remittances by individuals to their relatives of cash or goods, as well as freedom to travel to visit them without any restrictions, shall be permitted.

(B) DEMOCRATICALLY ELECTED GOVERNMENT.—Assistance to a democratically elected government in Cuba shall consist of additional economic assistance, together with assistance described in subparagraph (C). Such economic assistance may include—

(i) assistance under chapter 1 of part I (relating to development assistance), and chapter 4 of part II (relating to the economic support fund), of the Foreign Assistance Act of 1961;

(ii) assistance under the Agricultural Trade Development and Assistance Act of 1954;

(iii) financing, guarantees, and other forms of assistance provided by the Export-Import Bank of the United States;

(iv) financial support provided by the Overseas Private Investment Corporation for investment projects in Cuba;

(v) assistance provided by the Trade and Development Agency;

(vi) Peace Corps programs;

(vii) relief of Cuba's external debt; and

(viii) other appropriate assistance to carry out the policy of section 201.

(C) MILITARY ADJUSTMENT ASSISTANCE.—Assistance to a transition government in Cuba and to a democratically elected government in Cuba shall also include assistance in preparing the Cuban military forces to adjust to an appropriate role in a democracy.

(c) STRATEGY FOR DISTRIBUTION.—The plan developed under subsection (b) shall include a strategy for distributing assistance under the plan.

(d) DISTRIBUTION.—Assistance under the plan developed under subsection (b) shall be provided through United States Government organizations and nongovernmental organizations and private and voluntary organizations, whether within or outside the United States, including humanitarian, educational, labor, and private sector organizations.

(e) INTERNATIONAL EFFORTS.—The President shall take the necessary steps—

(1) to seek to obtain the agreement of other countries and of international financial institutions and multilateral organizations to provide to a transition government in Cuba, and to a democratically elected government in Cuba, assistance comparable to that provided by the United States under this Act; and

(2) to work with such countries, institutions, and organizations to coordinate all such assistance programs.

(f) CARIBBEAN BASIN INITIATIVE.—(1) The President shall determine, as part of the assistance plan developed under subsection (b), whether or not to designate Cuba as a beneficiary country under section 212 of the Caribbean Basin Economic Recovery Act.

(2) Any designation of Cuba as a beneficiary country under section 212 of such Act may only be made after a democratically elected government in Cuba is in power. Such designation may be made notwithstanding any other provision of law.

(3) The table contained in section 212(b) of the Caribbean Basin Economic Recovery Act (19 U.S.C. 2702(b)) is amended by inserting "Cuba" between "Costa Rica" and "Dominica".

(g) TRADE AGREEMENTS AND INVESTMENT.—The President, upon transmittal to Congress of a determination under section 203(c)(3) that a democratically elected government in Cuba is in power—

(1) shall take the necessary steps to extend nondiscriminatory trade treatment (most-favored-nation treatment) to the products of Cuba;

(2) shall take the necessary steps to enter into a preliminary agreement with such government in Cuba providing for extension of the North American Free Trade Agreement to a free and independent Cuba or to seek the creation of an economic community with a free, democratic, and independent Cuba;

(3) is authorized to enter into negotiations with a democratically elected government in Cuba to provide for the extension of the North American Free Trade Agreement to Cuba or to seek the creation of an economic community with a free, democratic, and independent Cuba; and

(4) is authorized to take such other steps as will encourage renewed investment in Cuba.

(h) **COMMUNICATION WITH THE CUBAN PEOPLE.**—The President shall take the necessary steps to communicate to the Cuban people the plan for assistance developed under this section.

(i) **REPORT TO CONGRESS.**—Not later than 180 days after the date of the enactment of this Act, the President shall transmit to the appropriate congressional committees a report describing in detail the plan developed under this section.

SEC. 203. COORDINATION OF ASSISTANCE PROGRAM; IMPLEMENTATION AND REPORTS TO CONGRESS; REPROGRAMMING.

(a) **COORDINATING OFFICIAL.**—The President shall designate a coordinating official who shall be responsible for—

(1) implementing the strategy for distributing assistance described in section 202(b);

(2) ensuring the speedy and efficient distribution of such assistance; and

(3) ensuring coordination among, and appropriate oversight by, the agencies of the United States that provide assistance described in section 202(b), including resolving any disputes among such agencies.

(b) **UNITED STATES-CUBA COUNCIL.**—Upon making a determination under subsection (c)(3) that a democratically elected government in Cuba is in power, the President, after consultation with the coordinating official, is authorized to designate a United States-Cuba council—

(1) to ensure coordination between the United States Government and the private sector in responding to change in Cuba, and in promoting market-based development in Cuba; and

(2) to establish periodic meetings between representatives of the United States and Cuban private sectors for the purpose of facilitating bilateral trade.

(c) **IMPLEMENTATION OF PLAN; REPORTS TO CONGRESS.**—

(1) **IMPLEMENTATION WITH RESPECT TO TRANSITION GOVERNMENT.**—Upon making a determination that a transition government in Cuba is in power, the President shall transmit that determination to the appropriate congressional committees and shall, subject to the availability of appropriations, commence the delivery and distribution of assistance to such transition government under the plan developed under section 202(b).

(2) **REPORTS TO CONGRESS.**—(A) The President shall transmit to the appropriate congressional committees a report setting forth the strategy for providing assistance described in section 202(b)(2) (A) and (C) to the transition government in Cuba under the plan of assistance developed under section 202(b), the types of such assistance, and the extent to which such assistance has been distributed in accordance with the plan.

(B) The President shall transmit the report not later than 90 days after making the determination referred to in paragraph (1), except that the President shall transmit the report in preliminary form not later than 15 days after making that determination.

(3) **IMPLEMENTATION WITH RESPECT TO DEMOCRATICALLY ELECTED GOVERNMENT.**—The President shall, upon determining that a democratically elected government in Cuba is in power, submit that determination to the appropriate congressional committees and shall, subject to the availability of appropriations, commence the delivery and distribution of assistance to such democratically elected government under the plan developed under section 202(b).

(4) **ANNUAL REPORTS TO CONGRESS.**—Not later than 60 days after the end of each fiscal year, the President shall transmit to the appropriate congressional committees a report on the assistance provided under the plan developed under section 202(b), including a description of each type of assistance, the amounts expended for such assistance, and a description of the assistance to be provided under the plan in the current fiscal year.

(d) **REPROGRAMMING.**—Any changes in the assistance to be provided under the plan developed under section 202(b) may not be made unless the President notifies the appropriate congressional committees at least 15 days in advance in accordance

with the procedures applicable to reprogramming notifications under section 634A of the Foreign Assistance Act of 1961 (22 U.S.C. 2394–1).

SEC. 204. AUTHORIZATION OF APPROPRIATIONS.

There are authorized to be appropriated to the President such sums as may be necessary to carry out this title.

SEC. 205. TERMINATION OF THE ECONOMIC EMBARGO OF CUBA.

(a) **PRESIDENTIAL ACTIONS.**—Upon submitting a determination to the appropriate congressional committees under section 203(c)(1) that a transition government in Cuba is in power, the President, after consulting with the Congress, is authorized to take steps to suspend the economic embargo of Cuba to the extent that such action contributes to a stable foundation for a democratically elected government in Cuba.

(b) **SUSPENSION OF CERTAIN PROVISIONS OF LAW.**—In carrying out subsection (a), the President may suspend the enforcement of—

- (1) section 620(a) of the Foreign Assistance Act of 1961 (22 U.S.C. 2370(a));
- (2) section 620(f) of the Foreign Assistance Act of 1961 (22 U.S.C. 2370(f)) with regard to the “Republic of Cuba”;
- (3) sections 1704, 1705(d), and 1706 of the Cuban Democracy Act (22 U.S.C. 6003, 6004(d), 6005);
- (4) section 902(c) of the Food Security Act of 1985; and
- (5) the prohibitions on transactions described in part 515 of title 31, Code of Federal Regulations.

(c) **ADDITIONAL PRESIDENTIAL ACTIONS.**—Upon submitting a determination to the appropriate congressional committees under section 203(c)(3) that a democratically elected government in Cuba is in power, the President shall take steps to terminate the economic embargo of Cuba.

(d) **CONFORMING AMENDMENTS.**—On the date on which the President submits a determination under section 203(c)(3)—

- (1) section 620(a) of the Foreign Assistance Act of 1961 (22 U.S.C. 2370(a)) is repealed;
- (2) section 620(f) of the Foreign Assistance Act of 1961 (22 U.S.C. 2370(f)) is amended by striking “Republic of Cuba”;
- (3) sections 1704, 1705(d), and 1706 of the Cuban Democracy Act of 1992 (22 U.S.C. 6003, 6004(d), and 6005) are repealed; and
- (4) section 902(c) of the Food Security Act of 1985 is repealed.

(e) **REVIEW OF SUSPENSION OF ECONOMIC EMBARGO.**—

(1) **REVIEW.**—If the President takes action under subsection (a) to suspend the economic embargo of Cuba, the President shall immediately so notify the Congress. The President shall report to the Congress no less frequently than every 6 months thereafter, until he submits a determination under section 203(c)(3) that a democratically elected government in Cuba is in power, on the progress being made by Cuba toward the establishment of such a democratically elected government. The action of the President under subsection (a) shall cease to be effective upon the enactment of a joint resolution described in paragraph (2).

(2) **JOINT RESOLUTIONS.**—For purposes of this subsection, the term “joint resolution” means only a joint resolution of the 2 Houses of Congress, the matter after the resolving clause of which is as follows: “That the Congress disapproves the action of the President under section 205(a) of the Cuban Liberty and Democratic Solidarity (LIBERTAD) Act of 1995 to suspend the economic embargo of Cuba, notice of which was submitted to the Congress on ____,” with the blank space being filled with the appropriate date.

(3) **REFERRAL TO COMMITTEES.**—Joint resolutions introduced in the House of Representatives shall be referred to the Committee on International Relations and joint resolutions introduced in the Senate shall be referred to the Committee on Foreign Relations.

(4) **PROCEDURES.**—(A) Any joint resolution shall be considered in the Senate in accordance with the provisions of section 601(b) of the International Security Assistance and Arms Export Control Act of 1976.

(B) For the purpose of expediting the consideration and enactment of joint resolutions, a motion to proceed to the consideration of any joint resolution after it has been reported by the appropriate committee shall be treated as highly privileged in the House of Representatives.

(C) Not more than 1 joint resolution may be considered in the House of Representatives and the Senate in the 6-month period beginning on the date on which the President notifies the Congress under paragraph (1) of the action taken under subsection (a), and in each 6-month period thereafter.

SEC. 206. REQUIREMENTS FOR A TRANSITION GOVERNMENT.

For purposes of this Act, a transition government in Cuba is a government in Cuba which—

- (1) is demonstrably in transition from communist totalitarian dictatorship to representative democracy;
- (2) has recognized the right to independent political activity and association;
- (3) has released all political prisoners and allowed for investigations of Cuban prisons by appropriate international human rights organizations;
- (4) has ceased any interference with Radio or Television Marti broadcasts;
- (5) makes public commitments to and is making demonstrable progress in—
 - (A) establishing an independent judiciary;
 - (B) dissolving the present Department of State Security in the Cuban Ministry of the Interior, including the Committees for the Defense of the Revolution and the Rapid Response Brigades;
 - (C) respecting internationally recognized human rights and basic freedoms as set forth in the Universal Declaration of Human Rights, to which Cuba is a signatory nation;
 - (D) effectively guaranteeing the rights of free speech and freedom of the press;
 - (E) organizing free and fair elections for a new government—
 - (i) to be held in a timely manner within a period not to exceed 1 year after the transition government assumes power;
 - (ii) with the participation of multiple independent political parties that have full access to the media on an equal basis, including (in the case of radio, television, or other telecommunications media) in terms of allotments of time for such access and the times of day such allotments are given; and
 - (iii) to be conducted under the supervision of internationally recognized observers, such as the Organization of American States, the United Nations, and other elections monitors;
 - (F) assuring the right to private property;
 - (G) taking appropriate steps to return to United States citizens (and entities which are 50 percent or more beneficially owned by United States citizens) property taken by the Cuban government from such citizens and entities on or after January 1, 1959, or to provide equitable compensation to such citizens and entities for such property;
 - (H) granting permits to privately owned telecommunications and media companies to operate in Cuba; and
 - (I) allowing the establishment of independent trade unions as set forth in conventions 87 and 98 of the International Labor Organization, and allowing the establishment of independent social, economic, and political associations;
- (6) does not include Fidel Castro or Raul Castro;
- (7) has given adequate assurances that it will allow the speedy and efficient distribution of assistance to the Cuban people;
- (8) permits the deployment throughout Cuba of independent and unfettered international human rights monitors; and
- (9) has extradited or otherwise rendered to the United States all persons sought by the United States Department of Justice for crimes committed in the United States.

SEC. 207. REQUIREMENTS FOR A DEMOCRATICALLY ELECTED GOVERNMENT.

For purposes of this Act, a democratically elected government in Cuba, in addition to continuing to comply with the requirements of section 206, is a government in Cuba which—

- (1) results from free and fair elections conducted under the supervision of internationally recognized observers;
- (2) has permitted opposition parties ample time to organize and campaign for such elections, and has permitted full access to the media to all candidates in the elections;
- (3) is showing respect for the basic civil liberties and human rights of the citizens of Cuba;
- (4) has made demonstrable progress in establishing an independent judiciary;
- (5) is substantially moving toward a market-oriented economic system;
- (6) is committed to making constitutional changes that would ensure regular free and fair elections that meet the requirements of paragraph (2); and
- (7) has made demonstrable progress in returning to United States citizens (and entities which are 50 percent or more beneficially owned by United States

citizens) property taken by the Cuban government from such citizens and entities on or after January 1, 1959, or providing full compensation for such property in accordance with international law standards and practice.

TITLE III—PROTECTION OF PROPERTY RIGHTS OF UNITED STATES NATIONALS AGAINST CONFISCATORY TAKINGS BY THE CASTRO REGIME

SEC. 301. STATEMENT OF POLICY.

The Congress makes the following findings:

(1) The right of individuals to hold and enjoy property is a fundamental right recognized by the United States Constitution and international human rights law, including the Universal Declaration of Human Rights.

(2) The illegal confiscation or taking of property by governments, and the acquiescence of governments in the confiscation of property by their citizens, undermines the comity among nations, the free flow of commerce, and economic development.

(3) It is in the interest of all nations to respect equally the property rights of their citizens and nationals of other countries.

(4) Nations that provide an effective mechanism for prompt, adequate, and fair compensation for the confiscation of private property will continue to have the support of the United States.

(5) The United States Government has an obligation to its citizens to provide protection against illegal confiscation by foreign nations and their citizens, including the provision of private remedies.

(6) Nations that illegally confiscate private property should not be immune to another nation's laws whose purpose is to protect against the confiscation of lawfully acquired property by its citizens.

(7) Trafficking in illegally acquired property is a crime under the laws of the United States and other nations, yet this same activity is allowed under international law.

(8) International law, by not providing effective remedies, condones the illegal confiscation of property and allows for the unjust enrichment from the use of confiscated property by governments and private entities at the expense of those who hold legal claim to the property.

(9) The development of an international mechanism sanctioning those governments and private entities that confiscate and unjustly use private property so confiscated should be a priority objective of United States foreign policy.

SEC. 302. LIABILITY FOR TRAFFICKING IN PROPERTY CONFISCATED FROM UNITED STATES NATIONALS.

(a) CIVIL REMEDY.—

(1) **LIABILITY FOR TRAFFICKING.**—(A) Except as provided in paragraphs (3) and (4), any person, including any agency or instrumentality of a foreign state in the conduct of a commercial activity, that, after the end of the 6-month period beginning on the date of the enactment of this Act, traffics in confiscated property shall be liable to any United States national who owns the claim to such property for money damages in an amount equal to the sum of—

(i) the amount which is the greater of—

(I) the amount, if any, certified to the claimant by the Foreign Claims Settlement Commission under the International Claims Settlement Act of 1949, plus interest;

(II) the amount determined under section 303(a)(2), plus interest; or
(III) the fair market value of that property, calculated as being the then current value of the property, or the value of the property when confiscated plus interest, whichever is greater; and

(ii) reasonable costs and attorneys' fees.

(B) Interest under subparagraph (A)(i) shall be at the rate set forth in section 1961 of title 28, United States Code, computed by the court from the date of the confiscation of the property involved to the date on which the action is brought under this subsection.

(2) **PRESUMPTION IN FAVOR OF CERTIFIED CLAIMS.**—There shall be a presumption that the amount for which a person, including any agency or instrumentality of a foreign state in the conduct of a commercial activity, is liable under

clause (i) of paragraph (1)(A) is the amount that is certified under subclause (I) of that clause. The presumption shall be rebuttable by clear and convincing evidence that the amount described in subclause (II) or (III) of that clause is the appropriate amount of liability under that clause.

(3) INCREASED LIABILITY FOR PRIOR NOTICE.—Except as provided in paragraph (4), any person, including any agency or instrumentality of a foreign state in the conduct of a commercial activity, that traffics in confiscated property after having received—

(A) notice of a claim to ownership of the property by a United States national who owns a claim to the confiscated property, and

(B) notice of the provisions of this section, shall be liable to that United States national for money damages in an amount which is the sum of the amount equal to the amount determined under paragraph (1)(A)(ii) plus triple the amount determined applicable under subclause (I), (II), or (III) of paragraph (1)(A)(i).

(4) APPLICABILITY.—(A) Except as otherwise provided in this paragraph, actions may be brought under paragraph (1) with respect to property confiscated before, on, or after the date of the enactment of this Act.

(B) In the case of property confiscated before the date of the enactment of this Act, no United States national may bring an action under this section unless such national acquired ownership of the claim to the confiscated property before such date.

(C) In the case of property confiscated on or after the date of the enactment of this Act, no United States national who acquired ownership of a claim to confiscated property by assignment for value after such date of enactment may bring an action on the claim under this section.

(5) TREATMENT OF CERTAIN ACTIONS.—(A) In the case of any action brought under this section by a United States national who was eligible to file the underlying claim in the action with the Foreign Claims Settlement Commission under title V of the International Claims Settlement Act of 1949 but did not so file the claim, the court may hear the case only if the court determines that the United States national had good cause for not filing the claim.

(B) In the case of any action brought under this section by a United States national whose claim in the action was timely filed with the Foreign Claims Settlement Commission under title V of the International Claims Settlement Act of 1949 but was denied by the Commission, the court may assess the basis for the denial and may accept the findings of the Commission on the claim as conclusive in the action under this section unless good cause justifies another result.

(6) INAPPLICABILITY OF ACT OF STATE DOCTRINE.—No court of the United States shall decline, based upon the act of state doctrine, to make a determination on the merits in an action brought under paragraph (1).

(b) DEFINITION.—As used in this subsection, the term “agency or instrumentality of a foreign state” has the meaning given that term in section 1603(b) of title 28, United States Code.

(c) JURISDICTION.—

(1) IN GENERAL.—Chapter 85 of title 28, United States Code, is amended by inserting after section 1331 the following new section:

“§ 1331a. Civil actions involving confiscated property

“The district courts shall have exclusive jurisdiction of any action brought under section 302 of the Cuban Liberty and Democratic Solidarity (LIBERTAD) Act of 1995, regardless of the amount in controversy.”.

(2) CONFORMING AMENDMENT.—The table of sections for chapter 85 of title 28, United States Code, is amended by inserting after the item relating to section 1331 the following:

“1331a. Civil actions involving confiscated property.”.

(d) CERTAIN PROPERTY IMMUNE FROM EXECUTION.—Section 1611 of title 28, United States Code, is amended by adding at the end the following:

“(c) Notwithstanding the provisions of section 1610 of this chapter, the property of a foreign state shall be immune from attachment and from execution in an action brought under section 302 of the Cuban Liberty and Democratic Solidarity (LIBERTAD) Act of 1995 to the extent the property is a facility or installation used by an accredited diplomatic mission for official purposes.”.

(e) ELECTION OF REMEDIES.—

(1) ELECTION.—Subject to paragraph (2)—

(A) any United States national that brings an action under this section may not bring any other civil action or proceeding under the common law, Federal law, or the law of any of the several States, the District of Columbia, or any territory or possession of the United States, that seeks monetary or nonmonetary compensation by reason of the same subject matter; and

(B) any person who brings, under the common law or any provision of law other than this section, a civil action or proceeding for monetary or nonmonetary compensation arising out of a claim for which an action would otherwise be cognizable under this section may not bring an action under this section on that claim.

(2) TREATMENT OF CERTIFIED CLAIMANTS.—In the case of any United States national that brings an action under this section based on a claim certified under title V of the International Claims Settlement Act of 1949—

(A) if the recovery in the action is equal to or greater than the amount of the certified claim, the United States national may not receive payment on the claim under any agreement entered into between the United States and Cuba settling claims covered by such title, and such national shall be deemed to have discharged the United States from any further responsibility to represent the United States national with respect to that claim;

(B) if the recovery in the action is less than the amount of the certified claim, the United States national may receive payment under a claims agreement described in subparagraph (A) but only to the extent of the difference between the amount of the recovery and the amount of the certified claim; and

(C) if there is no recovery in the action, the United States national may receive payment on the certified claim under a claims agreement described in subparagraph (A) to the same extent as any certified claimant who does not bring an action under this section.

(f) DEPOSIT OF EXCESS PAYMENTS BY CUBA UNDER CLAIMS AGREEMENT.—Any amounts paid by Cuba under any agreement entered into between the United States and Cuba settling certified claims under title V of the International Claims Settlement Act of 1949 that are in excess of the payments made on such certified claims after the application of subsection (e) shall be deposited into the United States Treasury.

(g) TERMINATION OF RIGHTS.—

(1) IN GENERAL.—All rights created under this section to bring an action for money damages with respect to property confiscated before the date of the enactment of this Act shall cease upon the transmittal to the Congress of a determination of the President under section 203(c)(3).

(2) PENDING SUITS.—The termination of rights under paragraph (1) shall not affect suits commenced before the date of such termination, and in all such suits, proceedings shall be had, appeals taken, and judgments rendered in the same manner and with the same effect as if this subsection had not been enacted.

SEC. 303. DETERMINATION OF CLAIMS TO CONFISCATED PROPERTY.

(a) EVIDENCE OF OWNERSHIP.—

(1) CONCLUSIVENESS OF CERTIFIED CLAIMS.—In any action brought under this title, the courts shall accept as conclusive proof of ownership a certification of a claim to ownership that has been made by the Foreign Claims Settlement Commission pursuant to title V of the International Claims Settlement Act of 1949 (22 U.S.C. 1643 and following).

(2) CLAIMS NOT CERTIFIED.—In the case of a claim that has not been certified by the Foreign Claims Settlement Commission before the enactment of this Act, a court may appoint a special master, including the Foreign Claims Settlement Commission, to make determinations regarding the amount and validity of claims to ownership of confiscated property. Such determinations are only for evidentiary purposes in civil actions brought under this title and do not constitute certifications pursuant to title V of the International Claims Settlement Act of 1949.

(3) EFFECT OF DETERMINATIONS OF FOREIGN ENTITIES.—In determining ownership, courts shall not accept as conclusive evidence of ownership any findings, orders, judgments, or decrees from administrative agencies or courts of foreign countries or international organizations that invalidate the claim held by a United States national, unless the invalidation was found pursuant to binding international arbitration to which United States national submitted the claim.

(b) AMENDMENT OF THE INTERNATIONAL CLAIMS SETTLEMENT ACT OF 1949.—Title V of the International Claims Settlement Act of 1949 (22 U.S.C. 1643 and following) is amended by adding at the end the following new section:

“EVALUATION OF OWNERSHIP CLAIMS REFERRED BY DISTRICT COURTS OF THE UNITED STATES

“SEC. 514. Notwithstanding any other provision of this title and only for purposes of section 302 of the Cuban Liberty and Solidarity (LIBERTAD) Act, a United States district court, for fact-finding purposes, may refer to the Commission, and the Commission may determine, questions of the amount and ownership of a claim by a United States national (as defined in section 4 of the Cuban Liberty and Solidarity (LIBERTAD) Act) resulting from the confiscation of property by the Government of Cuba described in section 503(a), whether or not the United States national qualified as a national of the United States (as defined in section 502(1)) at the time of the action by the Government of Cuba.”.

(c) RULE OF CONSTRUCTION.—Nothing in this Act or section 514 of the International Claims Settlement Act of 1949, as added by subsection (b), shall be construed—

(1) to require or otherwise authorize the claims of Cuban nationals who became United States citizens after their property was confiscated to be included in the claims certified to the Secretary of State by the Foreign Claims Settlement Commission for purposes of future negotiation and espousal of claims with a friendly government in Cuba when diplomatic relations are restored; or

(2) as superseding, amending, or otherwise altering certifications that have been made pursuant to title V of the International Claims Settlement Act of 1949 before the enactment of this Act.

SEC. 304. EXCLUSIVITY OF FOREIGN CLAIMS SETTLEMENT COMMISSION CERTIFICATION PROCEDURE.

Title V of the International Claims Settlement Act of 1949 (22 U.S.C. 1643 and following), as amended by section 303, is further amended by adding at the end the following new section:

“EXCLUSIVITY OF FOREIGN CLAIMS SETTLEMENT COMMISSION CERTIFICATION PROCEDURE

“SEC. 515. (a) Subject to subsection (b), neither any national of the United States who was eligible to file a claim under section 503 but did not timely file such claim under that section, nor any national of the United States (on the date of the enactment of this section) who was not eligible to file a claim under that section, nor any national of Cuba, including any agency, instrumentality, subdivision, or enterprise of the Government of Cuba or any local government of Cuba in place on the date of the enactment of this section, nor any successor thereto, whether or not recognized by the United States, shall have a claim to, participate in, or otherwise have an interest in, the compensation proceeds or other nonmonetary compensation paid or allocated to a national of the United States by virtue of a claim certified by the Commission under section 507, nor shall any court of the United States or any State court have jurisdiction to adjudicate any such claim.

“(b) Nothing in subsection (a) shall be construed to detract from or otherwise affect any rights in the shares of the capital stock of nationals of the United States owning claims certified by the Commission under section 507.”.

TITLE IV—EXCLUSION OF CERTAIN ALIENS

SEC. 401. EXCLUSION FROM THE UNITED STATES OF ALIENS WHO HAVE CONFISCATED PROPERTY OF UNITED STATES NATIONALS OR WHO TRAFFIC IN SUCH PROPERTY.

(a) GROUNDS FOR EXCLUSION.—The Secretary of State, in consultation with the Attorney General, shall exclude from the United States any alien who the Secretary of State determines is a person who—

(1) has confiscated, or has directed or overseen the confiscation of, property a claim to which is owned by a United States national, or converts or has converted for personal gain confiscated property, a claim to which is owned by a United States national;

(2) traffics in confiscated property, a claim to which is owned by a United States national;

(3) is a corporate officer, principal, or shareholder with a controlling interest of an entity which has been involved in the confiscation of property or traffick-

ing in confiscated property, a claim to which is owned by a United States national; or

(4) is a spouse, minor child, or agent of a person excludable under paragraph (1), (2), or (3).

(b) DEFINITIONS.—As used in this section, the following terms have the following meanings:

(1) CONFISCATED; CONFISCATION.—the terms “confiscated” and “confiscation” refer to—

(A) the nationalization, expropriation, or other seizure by foreign governmental authority of ownership or control of property on or after January 1, 1959—

(i) without the property having been returned or adequate and effective compensation provided; or

(ii) without the claim to the property having been settled pursuant to an international claims settlement agreement or other mutually accepted settlement procedure; and

(B) the repudiation by foreign governmental authority of, the default by foreign governmental authority on, or the failure by foreign governmental authority to pay, on or after January 1, 1959—

(i) a debt of any enterprise which has been nationalized, expropriated, or otherwise taken by foreign governmental authority;

(ii) a debt which is a charge on property nationalized, expropriated, or otherwise taken by foreign governmental authority; or

(iii) a debt which was incurred by foreign governmental authority in satisfaction or settlement of a confiscated property claim.

(2) PROPERTY.—The term “property” does not include claims arising from a territory in dispute as a result of war between United Nations member states in which the ultimate resolution of the disputed territory has not been resolved.

(3) TRAFFICS.—(A) A person or entity “traffics” in property if that person or entity knowingly and intentionally—

(i) sells, transfers, distributes, dispenses, brokers, manages, or otherwise disposes of confiscated property, or purchases, leases, receives, possesses, obtains control of, manages, uses, or otherwise acquires or holds an interest in confiscated property,

(ii) engages in a commercial activity using or otherwise benefiting from confiscated property, or

(iii) causes, directs, participates in, or profits from, trafficking (as described in clauses (i) and (ii)) by another person, or otherwise engages in trafficking (as described in clauses (i) and (ii)) through another person,

without the authorization of the United States national who holds a claim to the property.

(B) The term “traffics” does not include—

(i) the delivery of international telecommunication signals to Cuba that are authorized by section 1705(e) of the Cuban Democracy Act of 1992 (22 U.S.C. 6004(e)); or

(ii) the trading or holding of securities publicly traded or held, unless the trading is with or by a person determined by the Secretary of the Treasury to be a specially designated national.

(c) NATIONAL INTEREST EXEMPTION.—This section shall not apply where the Secretary of State finds, on a case-by-case basis, that making a determination under subsection (a) would be contrary to the national interest of the United States.

(d) EFFECTIVE DATE.—

(1) IN GENERAL.—This section applies to aliens seeking to enter the United States on or after the date of the enactment of this Act.

(2) TRAFFICKING.—This section applies only with respect to acts within the meaning of “traffics” that occur on or after the date of the enactment of this Act.

BACKGROUND AND PURPOSE

H.R. 927, the “Cuban Liberty and Democratic Solidarity (LIBERTAD) Act of 1995,” as amended, would take proactive steps to encourage an early end to the Castro regime, direct the President to prepare to support a transition and democratic government in Cuba, and provide additional protection for the rights of U.S. na-

tionals whose property has been illegally confiscated by the Cuban government.

Fidel Castro is alone in the Americas. Objective and respected human rights monitors consistently condemn the brutal and systematic repression of his regime, the last dictatorship in the region. Amnesty International's 1995 Report, released in July 1995, said of Castro's Cuba:

Some 600 prisoners of conscience were believed to be serving sentences of imprisonment. Human rights and political activists continue to face frequent short-term detention and harassment. Detention and trial procedures for political prisoners fall far short of international standards. There were frequent reports of ill-treatment in prisons and police stations. The authorities were suspected of bearing at least partial responsibility for the death by drowning of some 40 people trying to flee Cuba by boat.

The Inter-American Commission on Human Rights (IACHR), in its 1994 annual report, observed:

As a result, the information gathered by the IACHR during the period covered by this report leads it to believe that the human rights situation in Cuba is extremely serious. The fact is that the deterioration in living conditions, the repressive control exercised by the State through the security agencies against individuals and groups who differ with the regime and the extreme economic difficulties that the Cuban people are suffering caused—in the course of 1994—a mass exodus of persons who put out to sea on makeshift rafts in search of new horizons, despite the fact that they were taking their lives in their hands by doing so. Once again, the [IACHR] expresses its deep concern about the lack of civil and political rights and the continuous deterioration of economic, social and cultural rights.

The [IACHR] accordingly considers that the Cuban crisis has, primarily, deep internal roots that affect not only the economic, political and social sphere, but also are to be found in all the country's institutions in general. The factors that have contributed to this are, essentially, the subordination to the political branch of the entire Cuban social dimension, the repressive policy of the regime . . . , coupled with a system that excludes any differing viewpoint and the absence of effective guarantees that would enable persons to assert their rights *vis-a-vis* the State.

Taking these objective reports into account, the Committee believes that the international community is compelled by humanitarian considerations to take proactive steps to deny the Cuban regime the means of clinging to power so that the Cuban people can liberate themselves and join the burgeoning democratic community in the Americas.

H.R. 927, as reported, also is based on the conclusion that none of Castro's superficial economic "openings," adopted merely to scrape together hard currency for the government, justify a hair-

pin turn in U.S. policy toward Cuba. Economic development is not possible without private property, and property rights do not exist in Cuba today. H.R. 927, as reported, protects property rights and undermines the lawless exploitation of property that jeopardizes prospects for future trade and investment.

Opening up trade in the absence of fundamental economic reforms risks resuscitating a regime that is still the most powerful obstacle to democratic and free market reform. The course of action prescribed by H.R. 927, as amended, preserves U.S. credibility with the Cuban people as one of the few countries not willing to put aside what it knows about the Castro regime in exchange for mythical market-share. H.R. 927, as amended, seeks to break the *status quo* by extending an offer of broad U.S. support for a peaceful transition and providing disincentives to investment in Cuba by companies whose ventures might otherwise buoy the regime by exploiting the labor of the Cuban people and the property of U.S. citizens whose property in Cuba was wrongfully confiscated.

Title I, Enforcing U.S. Law to Encourage an Early End to the Castro Regime

Title I would tighten loopholes in the U.S. embargo (continuing a process begun by the Cuban Democracy Act of 1992) by, *inter alia*, urging the President to redouble efforts to encourage foreign countries to restrict trade and credit relations with Cuba (sec. 102); requiring full enforcement of the Cuban Assets Control Regulations (sec. 102(c)); prohibiting a U.S. national or agency from knowingly extending a "loan, credit, or other financing" to finance transactions involving any property owned by a U.S. national that was confiscated by the Cuban government (sec. 103); and strengthening existing U.S. laws prohibiting the reexport of Cuban sugar to the United States by requiring a certification of origin by the exporter and authorizing the seizure of such product in the case of a false certification (sec. 109).

Title I would also seek to cut off or prevent support for the Castro regime, particularly by organizations and countries that receive funds from the United States, by, *inter alia*, urging the President to apply existing law by immediately withholding U.S. assistance from countries that are undermining the U.S. embargo by providing aid to or concessional trade with Cuba (sec. 102(a)); requiring the President to reduce U.S. assistance to states of the former Soviet Union by an amount equal to assistance or credits provided by that state to Cuba for use of facilities used to spy on the United States (subject to a national security waiver and certification that the Russians are not sharing intelligence with the Cubans) (sec. 106(d)); seeking to ensure that the current Cuban government cannot join or benefit from membership in international financial institutions (such as the World Bank, International Monetary Fund, the Inter-American Development Bank, etc. (sec. 104) or the Organization of American States (OAS) (sec. 105); and requiring an annual report to Congress on all third-country assistance, trade, joint ventures, etc., with Cuba (sec. 108).

Title I also seeks to broaden current U.S. support for and communication with the Cuban people by, *inter alia*, explicitly authorizing U.S. support for democracy-building efforts within Cuba, such

as assistance to victims of political repression, assistance to human rights groups, the deployment of international human rights monitors, etc. (sec. 110); directing the early conversion of Television Marti to ultra-high frequency (UHF) to broaden its availability in Cuba (sec. 107); and directing the President to urge the OAS to create a special fund to support the immediate deployment of human rights and election observers in Cuba (sec. 110).

Title II, Preparing Now to Support a Democratic Transition in Cuba

Title II seeks to prepare for the inevitable democratic transition in Cuba by, *inter alia*, stating U.S. policy to support the self-determination of the Cuban people, which must be exercised without interference by any government (sec. 201); authorizing the President to develop a plan for providing specific types of U.S. assistance to a transition government and to a democratically-elected government (sec. 202), with a clear list of characteristics defining what constitutes an eligible government (secs. 206 and 207); defining steps toward the normalization of U.S. relations with a reformed Cuban government, including lifting the embargo (sec. 205); and directing the President to name a coordinating official to implement inter-agency assistance at the appropriate time and a U.S.-Cuba Council to promote private sector development and bilateral trade (sec. 203(a) and (b)).

Titles III and IV, Protecting U.S. Property Claimants and Discouraging Ventures that Resuscitate the Castro Regime

Titles III and IV seek to protect the interests of U.S. nationals whose property has been confiscated illegally by making persons or companies that knowingly and intentionally traffic in confiscated property of U.S. nationals in Cuba (beginning six months after the date of enactment) liable for damages in U.S. District Court (title III), and by excluding from entry into the United States any person who trafficks in confiscated property of U.S. nationals (title IV).

These provisions are intended primarily to create a "chilling effect" that will deny the current Cuban regime venture capital, discourage third-country nationals from seeking to profit from illegally confiscated property, and help preserve such property until such time as the rightful owners can successfully assert their claim. It should be noted that title III is written to preclude claims that might lead average Cubans on the island to misinterpret this law as intended to expel them from their homes—one of the many misleading statements that the Cuban regime and its supporters are making about this legislation.

COMMITTEE ACTION

H.R. 927 was introduced on February 14, 1995, by Representative Dan Burton, Chairman of the Subcommittee on the Western Hemisphere of the Committee on International Relations; original cosponsors of this legislation include Representatives Diaz-Balart, Ros-Lehtinen, Torricelli, Menendez, DeLay, Ballenger, Solomon, Goss, Smith (NJ), King, Ewing, Gallegly, Deutsch, Hansen, Barton, Rohrabacher, Funderburk, Sam Johnson, Vucanovich, Petri, Meek, and Gilchrest. Additional cosponsors of this legislation include Rep-

representatives Engel, Knollenberg, Wilson, Foley, Bartlett, McCollum, Royce, Dornan, Calvert, Shaw, Gutierrez, Duncan, Salmon, Sanford, Thurman, Frelinghuysen, Kim, Chabot, Burr, Andrews, and English.

On January 25, 1995, the Subcommittee on the Western Hemisphere held a hearing on the human rights situation in Cuba, including the sinking of the tugboat *13th of March*.

Witnesses for this hearing included: Rep. Lincoln Diaz Balart, U.S. Congressman; Janette Hernandez-Gutierrez, survivor of the *13th of March*; Almanza Romero; Sergio Perodin, survivor; Hon. Michael Skol, Principal Deputy Assistant Secretary of State for Inter-American Affairs; Jay Fernandez, Valladares Foundation; and Ninoska Perez Castellon, Cuban American National Foundation.

On February 23, 1995, the Subcommittee on the Western Hemisphere held hearing on the Cuba and U.S. policy.

Witnesses for this hearing included: Dr. Constantine Menges, George Washington University; Jorge Mas Canosa, Cuban American Foundation; Mark Falcoff, American Enterprise Institute; and Hon. Otto Reich, U.S.-Cuba Business Council; Gillian Gunn, the Cuba Project of Georgetown University.

On March 16, 1995, the Subcommittee on the Western Hemisphere held hearing on H.R. 927, the "Cuban Liberty and Democratic Solidarity (LIBERTAD) Act of 1995."

Witnesses for this hearing included: Rep. Lincoln Diaz Balart, U.S. Congressman; Rep. Charles Rangel, U.S. Congressman; Hon. Alexander Watson, Assistant Secretary of State for Inter-American Affairs; Richard Newcomb, Office of Foreign Assets Control, Department of Treasury; Frank Calzon, Freedom House; Pablo Reyes Martinez, Dissident Journalist; Col. Juan Montes, U.S. Army (Ret.).

On March 22, 1995, the Subcommittee on the Western Hemisphere held a mark-up of H.R. 927, the "Cuban Liberty and Democratic Solidarity (LIBERTAD) Act of 1995."

On May 18, 1995, the Subcommittee on the Western Hemisphere held a hearing on the Clinton Administration's reversal of U.S. immigration policy.

Witnesses for this hearing included: Hon. Peter Tarnoff, Under Secretary of State for Political Affairs; Rear Admiral Norman T. Saunders, U.S. Coast Guard; Commissioner Doris Meissner, U.S. Immigration and Naturalization Service; Gen. John Sheehan, Commander in Chief U.S. Atlantic Command, U.S. Army; Hon. Otto Reich, Center for Strategic and International Studies; Jorge Mas Canosa, Cuban American National Foundation; Hon. Elliot Abrams, The Hudson Institute; J. Raymond Molina, The Broad Front for Freedom of Cuba; Jay Fernandez, Valladares Foundation; Frank Calzon, Freedom House.

ROLL CALL VOTES AND AMENDMENTS AND FINAL PASSAGE

In compliance with clause (2)(l)(2)(B) of rule XI of the Rules of the House of Representatives, the record of committee roll call votes taken on final passage or amendments during the committee's consideration of H.R. 927, as amended, is set out on the fol-

lowing pages, as is a report of the committee's final action on the bill.

DESCRIPTION OF AMENDMENT, MOTION, ORDER OR OTHER
PROPOSITION

Hamilton amendment to the Burton amendment in the nature of a substitute to delete Titles III and IV (relating respectively to a right of action against certain persons who have trafficked in confiscated property, and to the exclusion from the United States of certain persons who have trafficked in confiscated property).

| Name and State | Aye | No | Present | Name and State | Aye | No | Present |
|------------------------------------|-------|-------|---------|-------------------------------------|-------|-------|---------|
| Benjamin A. Gilman, N.Y., Chmn. | | X | ..... | Lee H. Hamilton, Ind | X | ..... | ..... |
| William F. Goodling, Pa | | | | Sam Gejdenson, Conn | X | ..... | ..... |
| James A. Leach, Iowa | | | | Tom Lantos, Calif | ..... | ..... | ..... |
| Toby Roth, Wis | | X | ..... | Robert G. Torricelli, N.J | ..... | X | ..... |
| Henry J. Hyde, Ill | | X | ..... | Howard L. Berman, Calif | X | ..... | ..... |
| Doug Bereuter, Nebr | | | | Gary L. Ackerman, N.Y | ..... | X | ..... |
| Christopher H. Smith, N.J | | X | ..... | Harry Johnston, Fla | X | ..... | ..... |
| Dan Burton, Ind | | X | ..... | Eliot L. Engel, N.Y | ..... | ..... | ..... |
| Jan Meyers, Kans | | X | ..... | Eni F.H. Faleomavaega, Am. Samoa | ..... | ..... | ..... |
| Elton Gallegly, Calif | | X | ..... | Matthew G. Martinez, Calif | X | ..... | ..... |
| Ileana Ros-Lehtinen, Fla | | X | ..... | Donald M. Payne, N.J | ..... | ..... | ..... |
| Cass Ballenger, N.C | | X | ..... | Robert E. Andrews, N.J | ..... | ..... | ..... |
| Dana Rohrabacher, Calif | | X | ..... | Robert Menendez, N.J | ..... | X | ..... |
| Donald A. Manzullo, Ill | | X | ..... | Sherrod Brown, Ohio | ..... | X | ..... |
| Edward R. Royce, Calif | | X | ..... | Cynthia A. McKinney, Ga | ..... | ..... | ..... |
| Peter T. King, N.Y | | X | ..... | Alcee L. Hastings, Fla | ..... | ..... | ..... |
| Jay Kim, Calif | | | | Albert Russell Wynn, Md | ..... | X | ..... |
| Sam Brownback, Kans | | X | ..... | Michael R. McNulty, N.Y | ..... | ..... | ..... |
| David Funderburk, N.C | | X | ..... | James P. Moran, Va | X | ..... | ..... |
| Steven J. Chabot, Ohio | | X | ..... | Victor Frazer, V.I | ..... | ..... | ..... |
| Marshall "Mark" Sanford, S.C. | | X | ..... | ..... | ..... | ..... | ..... |
| Matt Salmon, Ariz | | X | ..... | ..... | ..... | ..... | ..... |
| Amo Houghton | | | | | | | |

Roth en bloc amendment to the Burton amendment in the nature of a substitute to delete certain elements from those which had to be included in an assistance plan prepared by the President, and for other purposes.

| Name and State | Aye | No | Present | Name and State | Aye | No | Present |
|------------------------------------|-------|-------|---------|-------------------------------------|-------|-------|---------|
| Benjamin A. Gilman, N.Y., Chmn. | X | ..... | ..... | Lee H. Hamilton, Ind | X | ..... | ..... |
| William F. Goodling, Pa | X | ..... | ..... | Sam Gejdenson, Conn | ..... | X | ..... |
| James A. Leach, Iowa | ..... | ..... | ..... | Tom Lantos, Calif | ..... | ..... | ..... |
| Toby Roth, Wis | X | ..... | ..... | Robert G. Torricelli, N.J | ..... | X | ..... |
| Henry J. Hyde, Ill | ..... | ..... | ..... | Howard L. Berman, Calif | ..... | X | ..... |
| Doug Bereuter, Nebr | ..... | ..... | ..... | Gary L. Ackerman, N.Y | ..... | X | ..... |
| Christopher H. Smith, N.J | ..... | X | ..... | Harry Johnston, Fla | X | ..... | ..... |
| Dan Burton, Ind | ..... | X | ..... | Eliot L. Engel, N.Y | ..... | X | ..... |
| Jan Meyers, Kans | X | ..... | ..... | Eni F.H. Faleomavaega, Am. Samoa | ..... | ..... | ..... |
| Elton Gallegly, Calif | X | ..... | ..... | Matthew G. Martinez, Calif | X | ..... | ..... |
| Ileana Ros-Lehtinen, Fla | ..... | X | ..... | Donald M. Payne, N.J | ..... | X | ..... |
| Cass Ballenger, N.C | X | ..... | ..... | Robert E. Andrews, N.J | ..... | X | ..... |
| Dana Rohrabacher, Calif | X | ..... | ..... | Robert Menendez, N.J | ..... | X | ..... |
| Donald A. Manzullo, Ill | X | ..... | ..... | Sherrod Brown, OH | ..... | X | ..... |
| Edward R. Royce, Calif | X | ..... | ..... | Cynthia A. McKinney, Ga | ..... | ..... | ..... |

| Name and State | Aye | No | Present | Name and State | Aye | No | Present |
|---------------------------------------|-----|----|---------|-------------------------------|-----|----|---------|
| Peter T. King, N.Y. | | X | | Alcee L. Hastings, Fla. | | X | |
| Jay Kim, Calif. | X | | | Albert Russell Wynn, Md. | | X | |
| Sam Brownback, Kans. | | | | Michael R. McNulty, N.Y. | | X | |
| David Funderburk, N.C. | | X | | James P. Moran, Va. | X | | |
| Steven J. Chabot, Ohio | X | | | Victor Frazer, V.I. | | | |
| Marshall "Mark" Sanford, S.C. | | X | | | | | |
| Matt Salmon, Ariz. | X | | | | | | |
| Amo Houghton, N.Y. | X | | | | | | |

Hamilton amendment to the Burton amendment in the nature of a substitute to delete Titles III and IV (relating respectively to a right of action against certain persons who have trafficked in confiscated property, and to the exclusion from the United States of certain persons who have trafficked in confiscated property), on reconsideration.

| Name and State | Aye | No | Present | Name and State | Aye | No | Present |
|---|-----|----|---------|---|-----|----|---------|
| Benjamin A. Gilman, N.Y., Chmn. | | X | | Lee H. Hamilton, Ind. | X | | |
| William F. Goodling, Pa. | | X | | Sam Gejdenson, Conn. | X | | |
| James A. Leach, Iowa | | | | Tom Lantos, Calif. | | | |
| Toby Roth, Wis. | | X | | Robert G. Torricelli, N.J. | | X | |
| Henry J. Hyde, Ill. | | | | Howard L. Berman, Calif. | X | | |
| Doug Bereuter, Nebr. | | | | Gary L. Ackerman, N.Y. | | X | |
| Christopher H. Smith, N.J. | | X | | Harry Johnston, Fla. | X | | |
| Dan Burton, Ind. | | X | | Eliot L. Engel, N.Y. | | X | |
| Jan Meyers, Kans. | | X | | Eni F.H. Faleomavaega, Am. Samoa. | | | |
| Elton Gallegly, Calif. | | X | | Matthew G. Martinez, Calif. ... | X | | |
| Ileana Ros-Lehtinen, Fla. | | X | | Donald M. Payne, N.J. | X | | |
| Cass Ballenger, N.C. | | X | | Robert E. Andrews, N.J. | | X | |
| Dana Rohrabacher, Calif. | | X | | Robert Menendez, N.J. | | X | |
| Donald A. Manzullo, Ill. | | X | | Sherrod Brown, Ohio | | X | |
| Edward R. Royce, Calif. | | X | | Cynthia A. McKinney, Ga. | | | |
| Peter T. King, N.Y. | | X | | Alcee L. Hastings, Fla. | X | | |
| Jay Kim, Calif. | | X | | Albert Russell Wynn, Md. | | X | |
| Sam Brownback, Kans. | | X | | Michael R. McNulty, N.Y. | | X | |
| David Funderburk, N.C. | | X | | James P. Moran, Va. | X | | |
| Steven J. Chabot, Ohio | | X | | Victor Frazer, V.I. | | | |
| Marshall "Mark" Sanford, S.C. | | X | | | | | |
| Matt Salmon, Ariz. | | X | | | | | |
| Amo Houghton, N.Y. | X | | | | | | |

The Burton amendment in the nature of a substitute, as amended.

| Name and State | Aye | No | Present | Name and State | Aye | No | Present |
|---|-----|----|---------|---|-----|----|---------|
| Benjamin A. Gilman, N.Y., Chmn. | X | | | Lee H. Hamilton, Ind. | | X | |
| William F. Goodling, Pa. | X | | | Sam Gejdenson, Conn. | | X | |
| James A. Leach, Iowa | | | | Tom Lantos, Calif. | | | |
| Toby Roth, Wis. | | | | Robert G. Torricelli, N.J. | X | | |
| Henry J. Hyde, Ill. | | | | Howard L. Berman, Calif. | | | |
| Doug Bereuter, Nebr. | | | | Gary L. Ackerman, N.Y. | X | | |
| Christopher H. Smith, N.J. | X | | | Harry Johnston, Fla. | | X | |
| Dan Burton, Ind. | X | | | Eliot L. Engel, N.Y. | X | | |
| Jan Meyers, Kans. | X | | | Eni F.H. Faleomavaega, Am. Samoa. | | | |
| Elton Gallegly, Calif. | X | | | Matthew G. Martinez, Calif. ... | | | |

| Name and State | Aye | No | Present | Name and State | Aye | No | Present |
|---------------------------------------|-----|-------|---------|-------------------------------|-------|-------|---------|
| Ileana Ros-Lehtinen, Fla | X | ..... | ..... | Donald M. Payne, N.J ..... | ..... | X | ..... |
| Cass Ballenger, N.C | X | ..... | ..... | Robert E. Andrews, N.J | X | ..... | ..... |
| Dana Rohrabacher, Calif | X | ..... | ..... | Robert Menendez, N.J | X | ..... | ..... |
| Donald A. Manzullo, Ill | X | ..... | ..... | Sherrod Brown, Ohio ..... | ..... | ..... | ..... |
| Edward R. Royce, Calif | X | ..... | ..... | Cynthia A. McKinney, Ga ..... | ..... | ..... | ..... |
| Peter T. King, N.Y | X | ..... | ..... | Alcee L. Hastings, Fla | X | ..... | ..... |
| Jay Kim, Calif | X | ..... | ..... | Albert Russell Wynn, Md ..... | ..... | X | ..... |
| Sam Brownback, Kans | X | ..... | ..... | Michael R. McNulty, N.Y | X | ..... | ..... |
| David Funderburk, N.C | X | ..... | ..... | James P. Moran, Va ..... | ..... | X | ..... |
| Steven J. Chabot, Ohio | X | ..... | ..... | Victor Frazer, V.I ..... | ..... | ..... | ..... |
| Marshall "Mark" Sanford, S.C. | X | ..... | ..... |  |  |  |  |
| Matt Salmon, Ariz | X | ..... | ..... |  |  |  |  |
| Amo Houghton, N.Y | X | ..... | ..... |  |  |  |  |

The Burton motion that the bill be reported to the House with the recommendation that the bill, as amended, do pass.

| Name and State | Aye | No | Present | Name and State | Aye | No | Present |
|---|-------|-------|---------|---|-------|-------|---------|
| Benjamin A. Gilman, N.Y., Chmn. | X | ..... | ..... | Lee H. Hamilton, Ind ..... | ..... | X | ..... |
| William F. Goodling, Pa | X | ..... | ..... | Sam Gejdenson, Conn ..... | ..... | X | ..... |
| James A. Leach, Iowa ..... | ..... | ..... | ..... | Tom Lantos, Calif ..... | ..... | ..... | ..... |
| Toby Roth, Wis ..... | ..... | X | ..... | Robert G. Torricelli, N.J | X | ..... | ..... |
| Henry J. Hyde, Ill | X | ..... | ..... | Howard L. Berman, Calif ..... | ..... | ..... | ..... |
| Doug Bereuter, Nebr ..... | ..... | ..... | ..... | Gary L. Ackerman, N.Y | X | ..... | ..... |
| Christopher H. Smith, N.J | X | ..... | ..... | Harry Johnston, Fla ..... | ..... | X | ..... |
| Dan Burton, Ind | X | ..... | ..... | Eliot L. Engel, N.Y | X | ..... | ..... |
| Jan Meyers, Kans | X | ..... | ..... | Eni F.H. Faleomavaega, Am. Samoa. .... | ..... | ..... | ..... |
| Elton Gallegly, Calif | X | ..... | ..... | Matthew G. Martinez, Calif ... | ..... | X | ..... |
| Ileana Ros-Lehtinen, Fla | X | ..... | ..... | Donald M. Payne, N.J. .... | ..... | X | ..... |
| Cass Ballenger, N.C | X | ..... | ..... | Robert E. Andrews, N.J | X | ..... | ..... |
| Dana Rohrabacher, Calif | X | ..... | ..... | Robert Menendez, N.J | X | ..... | ..... |
| Donald A. Manzullo, Ill | X | ..... | ..... | Sherrod Brown, Ohio | X | ..... | ..... |
| Edward R. Royce, Calif | X | ..... | ..... | Cynthia A. McKinney, Ga ..... | ..... | ..... | ..... |
| Peter T. King, N.Y | X | ..... | ..... | Alcee L. Hastings, Fla | X | ..... | ..... |
| Jay Kim, Calif | X | ..... | ..... | Albert Russell Wynn, Md ..... | ..... | X | ..... |
| Sam Brownback, Kans | X | ..... | ..... | Michael R. McNulty, N.Y | X | ..... | ..... |
| David Funderburk, N.C | X | ..... | ..... | James P. Moran, Va ..... | ..... | X | ..... |
| Steven J. Chabot, Ohio | X | ..... | ..... | Victor Frazer, V.I. .... | ..... | X | ..... |
| Marshall "Mark" Sanford, S.C.. | X | ..... | ..... |  |  |  |  |
| Matt Salmon, Ariz | X | ..... | ..... |  |  |  |  |
| Amo Houghton, N.Y | X | ..... | ..... |  |  |  |  |

SECTION-BY-SECTION ANALYSIS

Section 1. Short title; table of contents

This section states that this Act may be cited as the “Cuban Liberty and Democratic Solidarity (LIBERTAD) Act of 1995.” “Libertad” is Spanish for “liberty.” Section 1 also provides a table of contents for this Act.

Section 2. Findings

This section sets forth findings of the Congress with respect to Cuba as well as U.S. policy aimed at liberating the Cuban people from the dictatorship of Fidel Castro. Among the key findings are the following:

The economy of Cuba has experienced a decline of at least 60 percent in the last 5 years as a result of the end of its subsidization by the former Soviet Union of between \$5-6 billion annually, 36 years of Communist tyranny and economic mismanagement by the Castro government, the extreme decline in trade between Cuba and the countries of the former Soviet bloc, and the stated policy of the Russian Government and the countries of the former Soviet bloc to conduct economic relations with Cuba on strictly commercial terms.

The repression of the Cuban people, including a ban on free and fair democratic elections, and continuing violation of fundamental human rights has isolated the Cuban regime as the only nondemocratic government in the Western Hemisphere.

The consistent policy of the United States toward Cuba since the beginning of the Castro regime, carried out by both Democratic and Republican administrations, has sought to keep faith with the people of Cuba, and has been effective in sanctioning the totalitarian Castro regime.

The Cuban Democracy Act of 1992 calls upon the President to encourage the governments of countries that conduct trade with Cuba to restrict their trade and credit relations with Cuba.

The Castro government threatens international peace and security by engaging in acts of armed subversion and terrorism such as the training and supplying of groups dedicated to international violence. The Castro government continues to utilize blackmail, such as the immigration crisis with which it threatened the United States in the summer of 1994, and other unacceptable and illegal forms of conduct to influence the actions of sovereign states in the Western Hemisphere in violation of the Charter of the Organization of American States, other international agreements and international law. For the past 36 years, the Cuban Government has posed and continues to pose a national security threat against the United States.

The Cuban people deserve to be assisted in a decisive manner to end the tyranny that has oppressed them for 36 years and the continued failure to do so constitutes ethically improper conduct by the international community.

Section 3. Purposes

This section sets out the following purposes of this legislation: to assist the Cuban people in regaining their freedom and prosperity, as well as in joining the community of democracies flourishing in this Hemisphere; to seek international sanctions against the Castro government in Cuba; to encourage the holding of free and fair, democratic elections in Cuba, conducted under the supervision of internationally recognized observers; to develop a plan for furnishing assistance to a transition government and, subsequently, to a democratically elected government when such governments meet the eligibility requirements of this Act; to protect property rights abroad of United States nationals; and to provide for the national security of the United States in the face of threats from the Castro government of terrorism, theft of property from United States nationals, and domestic repression from which refugees flee to the United States.

Section 4. Definitions

This section sets forth definitions of terms used in the Act. Among the key terms defined in this section are the following:

Confiscated

For purposes of titles I and III, the term “confiscated” refers to the nationalization, expropriation, or other seizure by the Cuban government of ownership or control of property on or after January 1, 1959, without adequate and effective compensation or settlement, and the repudiation or default by the Cuban government on certain debts.

Economic embargo of Cuba

The term “economic embargo of Cuba” refers to the economic embargo imposed against Cuba pursuant to section 620(a) of the Foreign Assistance Act of 1961 (22 U.S.C. 2370(a)), section 5(b) of the Trading With the Enemy Act (50 U.S.C. App. 5(b)), the International Emergency Economic Powers Act (50 U.S.C. 1701 and following), and the Export Administration Act of 1979 (50 U.S.C. App. 2401 and following), as modified by the Cuban Democracy Act of 1992 (22 U.S.C. 6001 and following).

Property

The term “property” means any property (including intellectual property), real, personal or mixed, tangible or intangible, including any present, future, or contingent rights, security, or other interest therein, including any leasehold interest. For purposes of the right of action established in title III, “property” is defined to exclude most residential properties.

Traffics

For purposes of title III, a person “traffics” in property if that person knowingly and intentionally sells, transfers, distributes, dispenses, brokers, manages, or otherwise disposes of confiscated property, or purchases, leases, receives, possesses, obtains control of, manages, uses, or otherwise acquires an interest in confiscated property; engages in a commercial activity using such property; or participates indirectly in such activities through another person. The delivery of telecommunications signals to Cuba under the Cuban Democracy Act of 1992 and most stock or mutual fund transactions are expressly exempted.

United States national

The term “United States national” means any United States citizen or any other legal entity which is organized under U.S. law and has its principal place of business in the United States. Persons who were not United States citizens at the time their property in Cuba was confiscated but who subsequently became United States citizens are included within the definition of a United States national.

TITLE I—SEEKING SANCTIONS AGAINST THE CASTRO GOVERNMENT

Section 101. Statement of policy

Section 101 expresses the sense of the Congress, *inter alia*, that the acts of the Castro government, including its massive, systematic, and extraordinary violations of human rights, are a threat to international peace and that the President should propose and seek a U.N. Security Council vote on a mandatory international embargo against the totalitarian government of Cuba pursuant to chapter VII of the Charter of the United Nations, which is similar to measures taken by the United States with respect to Haiti.

Section 102. Enforcement of the economic embargo of Cuba

Section 102 addresses a profound concern of the committee that executive branch agencies are not vigorous in their enforcement of certain provisions of the U.S. embargo on Cuba or in their advocacy of U.S. policy before foreign governments. The explicit mandates in this legislation make clear congressional intent that U.S. law be enforced fully and, thereby, provide a basis for strict congressional oversight of executive branch enforcement measures henceforth.

This section reaffirms section 1704(a) of the Cuban Democracy Act of 1992, which states the President should encourage foreign countries to restrict trade and credit relations with Cuba. This section also urges the President to take immediate steps to apply the sanctions described in section 1704(b) of such Act against countries assisting Cuba; states that the Secretary of State shall ensure that U.S. diplomatic personnel communicate the reasons for the U.S. economic embargo on Cuba and urge foreign governments to cooperate more effectively with the embargo; urges the full enforcement of the Cuban Assets Control Regulations in part 515 of title 31, Code of Federal Regulations; adds “debt-for-equity swaps” to transactions covered under the Cuban Democracy Act of 1992; subjects persons violating travel restrictions to civil penalties and forfeiture of property by amending Section 16 of the Trading With the Enemy Act (in most cases, exempting news gathering, research, religious, or human rights groups).

Section 103. Prohibition against indirect financing of the Castro dictatorship

This section prohibits a U.S. national, agency, or permanent resident alien from knowingly extending any loan, credit, or other financing to finance transactions involving any property confiscated by the Cuban government the claim to which is owned by a U.S. national; subjects violators of this prohibition to penalties under the Cuban Assets Control Regulations; and terminates this prohibition when the U.S. embargo is lifted.

Section 104. United States opposition to Cuban membership in international financial institutions

This section seeks to ensure that the current Cuban government cannot join or benefit from membership in international financial institutions (such as the World Bank, International Monetary Fund, the Inter-American Development Bank, etc.). This section:

States that the Secretary of the Treasury shall instruct the United States executive director to each international financial institution to use the voice and vote of the United States to oppose the admission of Cuba as a member of such institution until a democratically elected government is in power in Cuba (as defined in sec. 207 of this Act);

Provides that during the period that a transition government is in power in Cuba (as defined in Section 206 of this Act), the President shall take steps to support the processing of Cuba's application for membership to take effect after a democratically elected government is in power; and,

Provides that, if any international financial institution approves a loan or other assistance to Cuba over U.S. opposition, the Secretary of the Treasury shall withhold from payment to such institution an amount equal to the loan or other assistance to the Cuban government.

Section 105. United States opposition to ending the suspension of the Government of Cuba from the Organization of American States

This section seeks to ensure that the United States opposes the reintegration of the current government of Cuba into the Organization of American States. (The Castro government was suspended by a vote of the OAS member states in 1961.) The committee believes that it is inconceivable that any OAS member government would consider Cuba to be worthy of active participation in the OAS without first undertaking fundamental democratic reforms, in light of the historic measures taken by the Organization to recognize "representative democracy as an indispensable condition for stability, peace, and development in the region. . . ."

Section 106. Assistance by the independent states of the former Soviet Union for the Cuban government

This section seeks to discourage any form of assistance from former Soviet states to the Cuban government, in light of the Castro regime's historic dependency on such assistance. This section:

Requires a report to Congress detailing progress toward the withdrawal from Cuba of personnel of any independent state of the former Soviet Union, including advisers, technicians, and military personnel, from the Cienfuegos nuclear facility in Cuba;

Amends section 498A(a)(11) of the Foreign Assistance Act of 1961 to explicitly designate facilities at Lourdes and Cienfuegos among those installations the dismantling of which should be considered by the President in determining whether to provide assistance to a former Soviet state. Also adds "providing assistance for or engaging in nonmarket based trade" with Cuba to the list of activities that render such countries ineligible for U.S. assistance; and

Requires the President to reduce assistance allocated for an independent state of the former Soviet Union by an amount equal to the sum of assistance and credits, if any, provided by such state after the date of enactment of this Act in support of intelligence facilities in Cuba, including the intelligence facility at Lourdes, Cuba. The President may waive this requirement if doing so is important to the national security and, in the case of Russia, if the President

certifies that the Russian government has assured the U.S. Government that the Russian government is not sharing intelligence from Lourdes with officials or agents of the Cuban government. Urgent humanitarian needs, including disaster and refugee relief; assistance for democratic political reform and rule of law; technical assistance for safety upgrades of civilian nuclear power plants; aid to create private sector and nongovernmental organizations and develop a free market system; and aid under the Cooperative Threat Reduction Act of 1993 are exempt from the withholding requirement. The President also is required, in the case of a certification with respect to Russia, to report to Congress on the intelligence activities of Russia in Cuba, the purposes of the Lourdes facility, and the extent of any Russian credits provided to Cuba for the use of the Lourdes facility.

Section 107. Television broadcasting to Cuba

This section seeks to expand the reach of the TV Marti signal by requiring the Director of the United States Information Agency (USIA) to implement a conversion of television broadcasting to Cuba under the Television Marti Service to UHF broadcasting. Reports to Congress are required until this conversion is completed. It is the committee's understanding that adequate funds are reserved for this activity in the USIA budget.

Section 108. Reports on assistance and commerce received by Cuba from other foreign countries

This section seeks to determine which governments and commercial entities are continuing to support the Castro government through trade, assistance, and joint ventures by requiring an annual report to Congress that includes a detailed description of all bilateral assistance provided to Cuba by other foreign countries, commercial ventures under way or under consideration (specifically whether such ventures involve property confiscated from a U.S. national), and any exchange of military supplies or equipment.

Section 109. Importation safeguard against certain Cuban products

The committee notes that the Cuban Assets Control Regulations prohibit the importation of and dealings in merchandise outside the United States that is of Cuban origin, is or has been located in or transported from or through Cuba, or is made or derived in whole or in part of any article which is "the growth, produce or manufacture of Cuba" (part 515.204 of title 31, Code of Federal Regulations). Furthermore, the committee understands that U.S. accession to NAFTA does not modify or alter the U.S. sanctions against Cuba; the statement of administrative action states explicitly, "The NAFTA rules of origin will not in any way diminish the Cuban sanctions program. . . . Nothing in the NAFTA would operate to override this prohibition."

This section seeks to strengthen existing U.S. laws prohibiting the importation of and dealings in merchandise outside the United States that is of Cuban origin, etc. It requires that a company exporting sugar or sugar products to the United States must certify to the satisfaction of the Secretary of the Treasury that the sugar or sugar product is not a product of Cuba; false certifications are

subject to forfeiture of the product. This section also requires reports to the Congress by the President on the enforcement of this provision and requires the publication of a list of companies found to have violated these provisions.

The committee takes note of the assurances of Congressional Research Service experts that this provision is fully consistent with trade agreements, noting that it is similar to other “procedural safeguards” meant to enforce the existing U.S. embargo on Cuban sugar. The burden of this provision is on sugar exporters to make certain that they are in compliance with U.S. law.

The committee expects that the appropriate U.S. agencies will enforce this provision fully, taking the necessary steps to verify documentation and provide swift sanction in the case of false or unreliable certifications. U.S. Treasury Department and Customs Service officials have said that this provision could be enforced by conducting periodic “document trace-backs,” requiring additional documentation, and performing on-site inspections of overseas facilities. In short, if the political will and resources are available, U.S. officials have the ability to enforce this provision in order to deter violations of existing U.S. law.

Section 110. Authorization of support for democratic and human rights groups and international observers

This section provides explicit authority, notwithstanding other specific provisions of the law except for notification requirements, for the President to provide immediate support to individuals and independent nongovernmental organizations to advance democracy-building efforts for Cuba, including:

Publications and audio-visual material on democracy, human rights, and market economies; humanitarian assistance to victims of political repressions and their families; and support for democratic and human rights groups; and,

Financial support, redirected from U.S. voluntary contributions to the OAS, for a special OAS emergency fund for human rights observers, election support, and election observation in Cuba (notwithstanding section 307 of the Foreign Assistance Act of 1961).

Section 111. Withholding of foreign assistance to countries supporting nuclear power plant in Cuba

This section is intended to deter countries from providing any form of support for the completion of the Cuban nuclear facility at Juragua, near Cienfuegos, Cuba. The committee takes note of expert conclusions that the plant’s construction is seriously flawed and that Cuba lacks a nuclear regulatory structure as well as adequate infrastructure and training to support the safe operation of the plant. The committee views with alarm recent reports that several countries, including Russia and Cuba, are considering the completion and operation of that plant.

This section requires the withholding from U.S. assistance to any country an amount equal to the sum of assistance and credits provided on or after the date of enactment by that country in support of the completion of the Juragua facility. The committee intends that “assistance and credits” be interpreted broadly, not limited merely to grant assistance or concessional transactions but also in-

cluding any form of financial, technical, or other support that facilitates completion of the plant at Juragua. This section exempts from any withholding certain forms of U.S. assistance, such as humanitarian and disaster aid and support for democratic political reform and free market development.

Section 112. Expulsion of criminals from Cuba

This section requires the President to instruct U.S. government officials to raise with Cuban officials the extradition or other means of return to the United States of persons residing in Cuba sought by the Department of Justice for crimes committed in the United States.

TITLE II—ASSISTANCE TO A FREE AND INDEPENDENT CUBA

Title II sends a clear, specific message to the Cuban people that the United States is prepared fully to assist in a peaceful transition, with due respect for their right of self-determination. Portions of this Act are purposely modeled on the FREEDOM Support Act of 1992, which authorizes specific types of assistance to the newly independent states of the former Soviet Union.

Title II instructs the President to develop an aid plan now so that the U.S. government is prepared to respond quickly to the inevitable democratic transition in Cuba. Title II lists types of U.S. assistance contemplated to be included in the required aid plan. It is not the intent of the Congress to mandate that the President include all of the listed forms of assistance in the plan. Moreover, although such U.S. assistance is authorized explicitly by section 204, delivery of such assistance is “subject to the availability of appropriations” (see section 203(c) (1) and (3)). No further authorization legislation would be required, however.

Section 201. Policy toward a transition government and a democratically elected government in Cuba

This section states that it is the policy of the United States to support Cuban self-determination and to plan now to provide emergency and longer-term support for the transition to democracy in Cuba, directly and through multilateral cooperation.

This section also states that it is the U.S. policy, *inter alia*, to not provide favorable treatment or influence on behalf of any individual or entity in the selection by the Cuban people of their future government; to be prepared to enter into negotiations with a democratically elected government in Cuba on the future of the U.S. presence at Guantanamo Bay; to terminate the economic embargo of Cuba when the President determines that a democratically elected government is in power in Cuba; and, to consider the extension of free trade arrangements to a democratic Cuba.

Section 202. Authorization of Assistance for the Cuban People

This section requires the President to develop a plan for providing economic assistance to Cuba, defining what types of assistance can be provided when a transition government is in power and when a democratically elected government is in power.

In the case of a transition government, assistance shall be limited to such food, medicine, medical supplies and equipment; assist-

ance to meet emergency energy needs; certain forms of assistance defined under section 498 of the Foreign Assistance Act of 1961 (FREEDOM Support Act of 1992); assistance in preparing the Cuban military forces to adjust to an appropriate role in a democracy; and remittances by individuals to their relatives of cash or goods.

In the case of a democratically elected government, assistance may include development assistance and economic support funds under the Foreign Assistance Act of 1961; assistance under the Agricultural Trade Development and Assistance Act of 1954; financing and other forms of assistance provided by the Export-Import Bank, Overseas Private Investment Corporation, and Trade and Development Agency; and external debt relief; Peace Corps programs; and assistance in preparing the Cuban military forces to adjust to an appropriate role in a democracy. Once a democratically elected government is in power, the President should consider Cuba's participation in Caribbean Basin Economic Recovery Act and shall take the necessary steps to extend most-favored nation treatment and free trade arrangements to Cuba.

This section also states that assistance should be provided through U.S. government organizations or through nongovernmental organizations, private and voluntary organizations (whether within or outside the United States), including humanitarian, educational, labor, and private sector organizations.

In addition, this section requires the President to seek to obtain the agreement of other countries, international financial institutions, and multilateral organizations to provide similar forms of assistance to a transition government and to a democratically elected government in Cuba.

Section 203. Coordination of assistance program; implementation and reports to Congress; reprogramming

This section makes explicit that delivery and distribution of assistance to a transition or democratically elected government is subject to the availability of appropriations.

This section requires the President to designate a Coordinating Official to implement the assistance plan, ensure the speedy and efficient distribution of assistance, and ensure coordination among the various U.S. agencies involved. It requires the President to designate a United States-Cuba Council to involve the private sector in promoting the market-based development of and bilateral trade with Cuba. It requires periodic reports to the Congress on implementation of this assistance plan.

Section 204. Authorization of Appropriations

This section authorizes to be appropriated such sums as may be necessary to carry out this title. It should be emphasized, however, that delivery of such assistance is made subject to the availability of appropriations.

Section 205. Termination of the Economic Embargo of Cuba

Section 205(a) provides that once a transition government is in power in Cuba, the President, after consulting with the Congress, is authorized to take such steps to suspend the economic embargo

of Cuba to the extent that such action contributes to a stable foundation for a democratically elected government. Subsection (e) requires a report to Congress by the President upon making this decision and no less than every six months thereafter and provides that Congress may reject the President's decision by enactment of a joint resolution of the Houses of Congress.

Section 205(c) further states that, upon submitting to Congress a determination under section 203(c)(3) that a democratically elected government is in power in Cuba, the President shall take steps to terminate the economic embargo of Cuba. This section explicitly repeals several provisions of the law related to the economic embargo once such a determination is made.

Section 206. Requirements for a transition government

This section specifies that for the purposes of this Act, a transition government in Cuba is a government which is demonstrably in transition from communist totalitarian dictatorship to representative democracy; has recognized the right to independent political activity and association; has released all political prisoners and allowed for investigations of Cuban prisons by appropriate international human rights organizations; has ceased any interference with Radio or Television Marti broadcasts; does not include Fidel Castro or Raul Castro; has given adequate assurances that it will allow the speedy and efficient distribution of assistance to the Cuban people; and permits the deployment throughout Cuba of independent and unfettered international human rights monitors.

In addition, a transition government also must have made public commitments to and be making demonstrable progress in establishing an independent judiciary; dissolving the present Department of State Security in the Cuban Ministry of the Interior, including the Committees for the Defense of the Revolution and the Rapid Response Brigades; respecting internationally recognized human rights and basic freedoms as set forth in the Universal Declaration of Human Rights; effectively guaranteeing the rights of free speech and freedom of the press; organizing free, fair, and open elections within one year; assuring the right to private property; taking appropriate steps to return to United States nationals property taken by the Government of Cuba; granting permits to privately owned telecommunications and media companies to operate in Cuba; and allowing the establishment of an independent trade unions and allowing independent social, economic, and political associations.

Section 207. Requirements for a democratically elected government

This section specifies that for the purposes of this Act, a democratically elected government in Cuba is a government that results from free and fair elections conducted under the supervision of internationally recognized observers; that has permitted opposition parties ample time to organize and campaign for such elections, and that has permitted full access to the media to all candidates in the elections; that is showing respect for the basic civil liberties and human rights of the citizens of Cuba; that has made demonstrable progress in establishing an independent judiciary; that is substantially moving toward a market-oriented economic system; that has committed to making constitutional changes that schedule

regular free and fair elections; and that has made demonstrable progress in returning to U.S. nationals property taken by the Government of Cuba or providing full compensation.

TITLE III—PROTECTION OF PROPERTY RIGHTS OF UNITED STATES NATIONALS AGAINST CONFISCATORY TAKINGS BY THE CASTRO REGIME

Title III creates a new right of action in U.S. district court for United States nationals whose confiscated property is being exploited in Cuba. The purpose of this new civil remedy is, in part, to discourage persons and companies from engaging in commercial transactions involving confiscated property, and in so doing to deny the Cuban regime the capital generated by such ventures and deter the exploitation of property confiscated from U.S. nationals.

This right of action is a unique but proportionate remedy for U.S. nationals who were targeted by the Castro regime when their property was confiscated in violation of both Cuban law and international law. H.R. 927, as amended, simply puts would-be investors on notice that if they traffic in confiscated property after this provision becomes law they will be held liable to the legitimate U.S. owners in U.S. courts. Persons trafficking in such property after receiving notice of a legitimate claim to the property would be liable for treble damages.

This provision is predicated on the committee's findings that the Cuban confiscations were illegal, that the Castro regime cannot grant clear title to such property without the consent of the legitimate owners, and that thousands of U.S. nationals can substantiate before a U.S. court that they hold a valid claim to certain Cuban property. Any dispute as to the amount and ownership of the claim is to be resolved by a U.S. court, which can accept as authoritative the findings of the Foreign Claims Settlement Commission, upon which the U.S. government routinely relies when deciding whether to espouse private claims against foreign governments.

Title III would not supplant or undermine the Foreign Claims Settlement process in any way; it merely provides a remedy for trafficking in property after it was confiscated. A claimant who uses this right of action successfully would forfeit the corresponding share of any subsequent negotiated settlement. The right to bring an action under this title will cease upon determination by the President that a democratically elected government is in power in Cuba.

The Committee expects that the existence of this remedy will make the recovery process less complicated because it will deter investment in and development of confiscated property, holding such property harmless until the rightful owners can reclaim, sell, or develop it under the laws of a democratic Cuba. The recovery of damages under title III may also satisfy some certified claims, thereby reducing the number of claimants that will have to share in any negotiated lump-sum payment.

Section 301. Statement of policy

Section 301 finds, *inter alia*, that the right of individuals to hold and enjoy property is a fundamental right; the U.S. Government has an obligation to protect its citizens against illegal confiscation;

nations that illegally confiscate private property should not be immune to another nation's laws whose purpose is to protect against the confiscation of lawfully acquired property; and international law, through the absence of effective remedies, condones the illegal confiscation of property and allows unjust enrichment from the use of confiscated property.

Section 302. Liability for trafficking in property confiscated from United States nationals

This section states that any person, including any agency or instrumentality of a foreign state in the conduct of a commercial activity, that, after the six-month period beginning on the date of enactment of this Act, traffics in property that was confiscated by the government of Cuba anytime on or after January 1, 1959, shall be liable to the U.S. national who owns the claim to such property. (Sec. 302(a)(1))

The amount of the liability is to be calculated based on the value of the property (determined in accordance with section 302(a)(1)(A)(i)) plus reasonable costs and attorneys' fees and interest.

The amount of the liability is treble the value of the property (plus costs, attorneys' fees, and interest) if the person or government-controlled entity traffics in the property after having received notice of the outstanding claim and notice of this section of the Act. (Sec. 302(a)(3))

A "United States national" is defined in section 4, in part, as "any United States citizen", meaning that this right of action is extended to persons who were naturalized after the subject property was confiscated, provided that the claim meets the tests in section 302(a)(4).

Section 302(a)(4)(B) states that, in the case of property confiscated before the date of enactment of this Act, the U.S. national had to have owned the claim to the property before the date of enactment in order to bring an action under this section. Section 302(a)(4)(C) states that in the case of property confiscated on or after the date of enactment, no U.S. national may bring an action under this section if he or she acquired the claim after the date of enactment. These provisions are intended, in part, to eliminate any incentive that might otherwise exist to transfer claims to confiscated property to U.S. nationals in order to take advantage of the remedy created by this section. Furthermore, it is not the intention of the committee that the right of action be available to entities that are incorporated in the United States after the date of enactment, inasmuch as such entities could not have owned the claim to confiscated property on the date of enactment because they did not then exist.

Section 302(a)(6) states that in the case of any action brought under this section by a U.S. national who was eligible to file the underlying claim before the Foreign Claims Settlement Commission but did not do so, the court may hear the case only if the court determines that there was good cause for not filing the claim with the Commission. In the case of any action brought under this section by a U.S. national who did file a claim with the Commission but had such claim denied, the court may assess the basis for the

denial and may accept the findings of the Commission unless good cause justifies another result.

Sections 302(c) and (d), respectively, amend title 28, United States Code, to grant United States district courts exclusive jurisdiction over actions brought under this section and to make diplomatic facilities immune from attachment and execution in such actions.

Section 302(e)(1) requires an election of remedies. Persons who bring an action under this section may not bring a civil action under any other law seeking compensation by reason of the same subject matter, and persons who bring a civil action under any other law seeking compensation arising out of the same claim may not bring an action under this section.

Section 302(e)(1) contains special rules designed to prevent double compensation of certified claimants. Persons who receive a recovery in an action under this section cannot subsequently collect compensation for the same claim in subsequent settlements, except to the extent that the certified claim was not fully satisfied by the recovery in the action under this section. Certified claims under the Foreign Claims Settlement Commission procedure are not adversely affected by an unsuccessful action brought on the basis of the same claim under this section.

Section 302(g) terminates the right to bring actions under this section when the President determines that a democratically elected government is in power in Cuba, thus preventing new cases from being generated after the transition in Cuba to such a government. Actions commenced prior to such a determination by the President shall not be affected by such determination.

Section 303. Determination of claims to confiscated property

This section establishes alternative methods for determining the amount and ownership of claims brought under section 302. For example, section 303(a)(1) states that the courts shall accept as “conclusive proof of ownership” certification of a claim by the Foreign Claims Settlement Commission. Section 303(a)(2) states that in the case of a claim that has not been certified, the court may appoint a “special master” (including the Commission) to make determinations regarding the amount and validity of claims. This “special master” provision allows the court to call upon the recognized special expertise of the Commission in evaluating such claims, but a determination by the Commission in such a case shall not constitute certification of the claim pursuant to title V of the International Claims Settlement Act of 1949.

Section 303(b) amends title V the International Claims Settlement Act of 1949 to authorize a U.S. district court to refer to the Foreign Claims Settlement Commission a case for the purposes of determining the amount and validity of a claim brought under section 302. This subsection further authorizes the Commission to make such determinations, whether or not the U.S. national qualified as a national (as defined in the International Claims Settlement Act) at the time of the confiscation.

Section 303(c) makes explicit that nothing in this Act shall be construed as requiring or authorizing the claims of Cuban nationals who became United States citizens after their property was con-

fiscated to be included in the existing claims certified to the Secretary of State by the Commission for purposes of espousal and future negotiation with a friendly government in Cuba.

Section 304. Exclusivity of Foreign Claims Settlement Commission certification procedure

This section is intended to make explicit that this Act is not intended to create any additional claims under the Foreign Claims Settlement Commission procedure, which closed in 1972 after certifying 5,911 claims valued at \$1.8 billion. This section amends the International Claims Settlement Act of 1949 to provide that persons who were eligible to file claims under that Act but did not do so, persons who were not eligible to file a claim under that Act, and Cuban nationals or instrumentalities shall not have a claim to any compensation paid or allocated to a U.S. national by virtue of a certified claim. The amendment also denies U.S. courts jurisdiction to adjudicate any such claim.

TITLE IV—EXCLUSION OF CERTAIN ALIENS

Section 401. Exclusion from the United States of aliens who have confiscated property of United States nationals or who traffic in such property

This section provides that the Secretary of State, in consultation with the Attorney General, shall exclude any alien seeking to enter the United States who the Secretary of State determines has confiscated property the claim to which is owned by a U.S. national; knowingly and intentionally traffics in confiscated property after the date of enactment of this Act; is a corporate officer, principal, or controlling shareholder in a company that has been involved in such confiscations or trafficking; or, is a spouse, minor child, or agent of any person described above.

Section 401(d) allows the Secretary of State to waive the requirements of this section on a case-by-case basis when the Secretary of State finds that to do so is in the national interest of the United States.

It is the intent of the committee that this provision be enforced consistent with U.S. treaty obligations, including trade agreements. The committee expects the Departments of State and Justice to enforce these restrictions vigorously and, at the very least, to immediately incorporate the names of all persons known to U.S. embassies and other agencies to fall into the above categories onto computerized records that are regularly consulted by consular officials when issuing visas. The committee is aware that the Department of State is actively engaged in prosecuting hundreds of confiscation claims of U.S. citizens in Nicaragua, Honduras, Costa Rica, and Cuba; persons who are responsible for these confiscations or who are trafficking in such property should be among those initially targeted for exclusion under this section.

COMMITTEE OVERSIGHT FINDINGS

In compliance with clause 2(l)(3)(A) of rule XI of the Rules of the House of Representatives, the Committee reports that the findings and recommendations of the Committee, based on oversight activi-

ties under clause 2(b)(1) of Rule X of the Rules of the House of Representatives, are incorporated in the descriptive portions of this report.

COMMITTEE ON GOVERNMENT REFORM AND OVERSIGHT FINDINGS

No findings or recommendations of the Committee on Government Reform and Oversight were received as referred to in clause 2(l)(3)(D) of rule XI of the Rules of the House of Representatives.

NEW BUDGET AUTHORITY AND TAX EXPENDITURES

The Committee adopts the cost estimate of the Congressional Budget Office, set out below, as its submission of any required information on new budget authority, new spending authority, new credit authority, or an increase or decrease in the national debt required by clause 2(l)(3)(B) of rule XI of the House of Representatives.

INFLATIONARY IMPACT STATEMENT

In compliance with clause 2(l)(4) of rule XI of the Rules of the House of Representatives, the Committee estimates that H.R. 927 will have no significant inflationary impact on prices and costs in the operation of the national economy.

CONGRESSIONAL BUDGET OFFICE COST ESTIMATE

In compliance with clause 2(l)(3)(C) of rule XI of the Rules of the House of Representatives, the Committee sets forth with respect to H.R. 927 the following estimate and comparison prepared by the Director of the Congressional Budget Office under section 403 of the Budget Act of 1974:

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, July 24, 1995.

Hon. BENJAMIN A. GILMAN,
Chairman, Committee on International Relations, House of Representatives, Washington, DC.

DEAR MR. CHAIRMAN: The Congressional Budget Office has reviewed H.R. 927, the Cuban Liberty and Democratic Solidarity Act of 1995, as ordered reported by the House Committee on International Relations on July 12, 1995. The bill would strengthen sanctions against the Castro regime, authorize assistance to a transitional or democratically elected government in Cuba, create a new right for U.S. nationals to take civil action against persons or companies that traffic in confiscated property, and exclude certain aliens from the United States.

As ordered reported, the bill could have a significant budgetary impact through its authorization of discretionary appropriations. This impact, however, cannot be reliably estimated because it depends on developments in Cuba that are impossible to predict. CBO understands from Committee staff that a Committee amendment will be offered on the House floor that would strip the bill of an open-ended authorization of appropriations (section 204) and that would make certain other provisions subject to further author-

ization and appropriations action. Such an amendment would reduce the bill's budgetary impact to relatively small amounts.

The bill would affect governmental receipts; therefore, pay-as-you-go procedures would apply. However, CBO estimates that additional receipts would not be significant at least through 1998. The bill would not affect the budgets of state or local governments.

TITLE I

Title I would exhort the President to seek an international embargo against Cuba. The title would prohibit certain indirect transactions involving confiscated property and would impose upon the Administration new certification and reporting requirements. If limited to information otherwise available, meeting the certification and reporting requirements would not add appreciably to the administrative burden imposed by existing sanctions.

Section 110 would authorize a voluntary contribution of not less than \$5 million to an emergency fund to be administered by the Organization of American States (OAS). The OAS could use the fund to deploy human rights observers and to provide election support and observers in Cuba. Creation of the fund would require negotiations with other member states. The section also would authorize assistance to individuals and non-governmental organizations to provide informational matter, assistance to victims of torture, support for democratic and human rights groups in Cuba, and support for visits by human rights monitors. These activities are currently authorized and funded by other provisions of law.

TITLE II

Section 204 of title II would authorize the appropriation of such sums as may be necessary for assistance to a transitional and/or democratically elected government in Cuba. For a transitional government, the bill would authorize a program of humanitarian aid and assistance to foster democratic institutions and a free-market economy. Once a democratically elected government is in power, the bill would authorize additional assistance, credits, and investment insurance. The spending authorized by the title is open-ended, and the timing is subject to events that are impossible to estimate. No appropriations are authorized before a change in regime in Cuba. Appropriations under section 204 as ordered reported could exceed \$1 billion over a three- to five-year period. Removing section 204 and making other implicit authorizations subject to subsequent Congressional action would reduce the budgetary impact to negligible amounts.

Title II would require the President also to take steps to extend most favored nation status and duty-free treatment under the Caribbean Basin Initiative to a democratically elected government in Cuba. Before the President could extend preferential tariff treatment to Cuba, Congress would need to pass additional legislation to amend general note 3(b) of the Harmonized Tariff Schedule of the United States. Because no tariff rates would change without further legislation, CBO estimates that enacting these provisions would not affect governmental receipts.

TITLE III

Title III would enable U.S. nationals who have claims against property confiscated by Castro regime to file suit in federal court against persons or businesses who traffic in such confiscated property, beginning six months after enactment of this bill. According to the Foreign Claims Settlement Commission, about 6,000 U.S. citizens and businesses have outstanding claims against confiscated property in Cuba. In addition, about 15,000 U.S. nationals who have not filed claims with this commission may also have had commercial property confiscated in Cuba.

It is difficult to predict what percentage of the potential claimants to confiscated property would file suits under this bill and what percentage of those who file would have legitimate claims. Based on information from the Administrative Office of the United States Courts (AOUSC), we estimate that the federal court system would incur about \$2 million in additional costs to address cases that actually go to trial. Also, the AOUSC predicts that some additional suits would be filed by claimants to confiscated property who do not necessarily have a legitimate claim under this bill, but who would want to test the law. Because there are costs associated with processing claims regardless of whether they are eventually dismissed because of lack of merit, CBO expects that enacting this bill would result in some additional costs to the federal judiciary. Each additional case filed would cost about \$4,500 to process. At this time, CBO does not have sufficient information for estimating the number of such filings and the total costs that would be incurred by the judiciary.

The Foreign Claims Settlement Commission could incur additional costs because it could be asked to assist the courts in reviewing cases. CBO estimates that the commission would require several new attorneys and support personnel to fulfill this responsibility, with costs up to about \$1 million each year. All of the costs for title III would be subject to the availability of appropriated funds.

In addition, any excess receipts paid by Cuba in the settlement of confiscated property claims would be deposited into the Treasury. At this time, CBO cannot predict either the likelihood or the magnitude of such receipts.

As the result of additional civil filing fees paid to the judiciary, the federal government would collect additional governmental receipts and offsetting collections. CBO estimates that such receipts and offsetting collections would total less than \$500,000. However, the amount could be higher if the number of claims filed exceeds 10,000 claims.

Title IV would require the Secretary of State to exclude from the United States any alien who has confiscated property or who has trafficked in confiscated property owned by a U.S. national. The title would not have a significant budgetary impact.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contacts are Joseph C. Whitehill, Susanne Mehlman, and Melissa Sampson.

Sincerely,

JAMES L. BLUM
(For June E. O'Neill, Director).

CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with clause 3 of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italics, existing law in which no change is proposed is shown in roman):

SECTION 16 OF THE TRADING WITH THE ENEMY ACT

SEC. 16. (a) Whoever shall willfully violate any of the provisions of this Act or of any license, rule, or regulation issued thereunder, and whoever shall willfully violate, neglect, or refuse to comply with any order of the President issued in compliance with the provisions of the Act shall, upon conviction, be fined not more than \$1,000,000, or if a natural person, be fined not more than \$100,000, or imprisoned for not more than ten years or both; and the officer, director, or agent of any corporation who knowingly participates in such violation shall, upon conviction, be fined not more than \$100,000 or imprisoned for not more than ten years or both.

[(b)(1) A civil penalty of not to exceed \$50,000 may be imposed by the Secretary of the Treasury on any person who violates any license, order, rule, or regulation issued in compliance with the provisions of this Act.

[(2) The penalties provided under this subsection may not be imposed for—

[(A) news gathering, research, or the export or import of, or transmission of, information or informational materials; or

[(B) clearly defined educational or religious activities, or activities of recognized human rights organizations, that are reasonably limited in frequency, duration, and number of participants.

[(c) Upon conviction, any property, funds, securities, papers, or other articles or documents, or any vessel, together with tackle, apparel, furniture, and equipment, concerned in any violation of subsection (a) may be forfeited to the United States.

[(b)(1) The Secretary of the Treasury may impose a civil penalty of not more than \$50,000 on any person who violates any license, order, rule, or regulation issued under this Act.

[(2) Any property, funds, securities, papers, or other articles or documents, or any vessel, together with its tackle, apparel, furniture, and equipment, that is the subject of a violation under paragraph (1) shall, at the discretion of the Secretary of the Treasury, be forfeited to the United States Government.

[(3) The penalties provided under this subsection may not be imposed for—

[(A) news gathering, research, or the export or import of, or transmission of, information or informational materials; or

[(B) clearly defined educational or religious activities, or activities of recognized human rights organizations, that are reasonably limited in frequency, duration, and number of participants.

[(4) The penalties provided under this subsection may be imposed only on the record after opportunity for an agency hearing

in accordance with sections 554 through 557 of title 5, United States Code, with the right to prehearing discovery.

[(5) Judicial review of any penalty imposed under this subsection may be had to the extent provided in section 702 of title 5, United States Code.]

(b)(1) A civil penalty of not to exceed \$50,000 may be imposed by the Secretary of the Treasury on any person who violates any license, order, rule, or regulation issued in compliance with the provisions of this Act.

(2) Any property, funds, securities, papers, or other articles or documents, or any vessel, together with its tackle, apparel, furniture, and equipment, that is the subject of a violation under paragraph (1) shall, at the discretion of the Secretary of the Treasury, be forfeited to the United States Government.

(3) The penalties provided under this subsection may not be imposed for—

(A) news gathering, research, or the export or import of, or transmission of, information or informational materials; or

(B) clearly defined educational or religious activities, or activities of recognized human rights organizations, that are reasonably limited in frequency, duration, and number of participants.

(4) The penalties provided under this subsection may be imposed only on the record after opportunity for an agency hearing in accordance with sections 554 through 557 of title 5, United States Code, with the right to prehearing discovery.

(5) Judicial review of any penalty imposed under this subsection may be had to the extent provided in section 702 of title 5, United States Code.

SECTION 1704 OF THE CUBAN DEMOCRACY ACT OF 1992

SEC. 1704. INTERNATIONAL COOPERATION.

(a) * * *

(b) SANCTIONS AGAINST COUNTRIES ASSISTING CUBA.—

(1) * * *

(2) DEFINITION OF ASSISTANCE.—For purposes of paragraph

(1), the term “assistance to Cuba”—

(A) means assistance to or for the benefit of the Government of Cuba that is provided by grant, concessional sale, guaranty, or insurance, or by any other means on terms more favorable than that generally available in the applicable market, whether in the form of a loan, lease, credit, or otherwise, and such term includes subsidies for exports to Cuba and favorable tariff treatment of articles that are the growth, product, or manufacture of Cuba; [and]

(B) includes an exchange, reduction, or forgiveness of Cuban debt owed to a foreign country in return for a grant of an equity interest in a property, investment, or operation of the Government of Cuba (including the government of any political subdivision of Cuba, and any agency or instrumentality of the Government of Cuba) or of a Cuban national; and

[(B)] (C) does not include—

- (i) donations of food to nongovernmental organizations or individuals in Cuba, or
- (ii) exports of medicines or medical supplies, instruments, or equipment that would be permitted under section 1705(c).

As used in this paragraph, the term “agency or instrumentality of the Government of Cuba” means an agency or instrumentality of a foreign state as defined in section 1603(b) of title 28, United States Code, with “Cuba” substituted for “a foreign state” each place it appears in such section.

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FOREIGN ASSISTANCE ACT OF 1961

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PART I

* * * * *

CHAPTER 11—SUPPORT FOR THE ECONOMIC AND DEMOCRATIC DEVELOPMENT OF THE INDEPENDENT STATES OF THE FORMER SOVIET UNION

* * * * *

SEC. 498A. CRITERIA FOR ASSISTANCE TO GOVERNMENTS OF THE INDEPENDENT STATES.

(a) **IN GENERAL.**—In providing assistance under this chapter for the government of any independent state of the former Soviet Union, the President shall take into account not only relative need but also the extent to which that independent state is acting to—

(1) * * *

* * * * *

(11) terminate support for the communist regime in Cuba, including removal of troops, closing [of military facilities] *military and intelligence facilities, including the military and intelligence facilities at Lourdes and Cienfuegos*, and ceasing trade subsidies and economic, nuclear, and other assistance.

(b) **INELIGIBILITY FOR ASSISTANCE.**—The President shall not provide assistance under this chapter—

(1) * * *

* * * * *

(4) for the government of any independent state that is prohibited from receiving such assistance by section 669 or 670 of this Act or sections 306(a)(1) and 307 of the Chemical and Biological Weapons Control and Warfare Elimination Act of 1991; [or]

(5) for the government of any independent state effective 30 days after the President has determined and certified to the appropriate congressional committees (and Congress has not enacted legislation disapproving the determination within that 30-day period) that such government is providing assistance

for, or engaging in nonmarket based trade (as defined in section 498B(k)(3)) with, the Cuban government; or

[(5)] (6) for the Government of Russia if it has failed to make significant progress on the removal of Russian or Commonwealth of Independent States troops from Estonia, Latvia, and Lithuania or if it has failed to undertake good faith efforts, such as negotiations, to end other military practices that violate the sovereignty of the Baltic states.

* * * * *

(d) *REDUCTION IN ASSISTANCE FOR SUPPORT OF INTELLIGENCE FACILITIES IN CUBA.*—(1) Notwithstanding any other provision of law, the President shall withhold from assistance provided, on or after the date of the enactment of this subsection, for an independent state of the former Soviet Union under this chapter an amount equal to the sum of assistance and credits, if any, provided on or after such date by such state in support of intelligence facilities in Cuba, including the intelligence facility at Lourdes, Cuba.

(2)(A) The President may waive the requirement of paragraph (1) to withhold assistance if the President certifies to the appropriate congressional committees that the provision of such assistance is important to the national security of the United States, and, in the case of such a certification made with respect to Russia, if the President certifies that the Russian Government has assured the United States Government that the Russian Government is not sharing intelligence data collected at the Lourdes facility with officials or agents of the Cuban Government.

(B) At the time of a certification made with respect to Russia pursuant to subparagraph (A), the President shall also submit to the appropriate congressional committees a report describing the intelligence activities of Russia in Cuba, including the purposes for which the Lourdes facility is used by the Russian Government and the extent to which the Russian Government provides payment or government credits to the Cuban Government for the continued use of the Lourdes facility.

(C) The report required by subparagraph (B) may be submitted in classified form.

(D) For purposes of this paragraph, the term “appropriate congressional committees” includes the Permanent Select Committee on Intelligence of the House of Representatives and the Select Committee on Intelligence of the Senate.

(3) The requirement of paragraph (1) to withhold assistance shall not apply with respect to—

(A) assistance to meet urgent humanitarian needs, including disaster and refugee relief;

(B) democratic political reform and rule of law activities;

(C) technical assistance for safety upgrades of civilian nuclear power plants;

(D) the creation of private sector and nongovernmental organizations that are independent of government control;

(E) the development of a free market economic system; and

(F) assistance for the purposes described in the Cooperative Threat Reduction Act of 1993 (title XII of Public Law 103–160).

SEC. 498B. AUTHORITIES RELATING TO ASSISTANCE AND OTHER PROVISIONS.

(a) * * *

* * * * *

(k) DEFINITIONS.—

(1) * * *

* * * * *

(3) *NONMARKET BASED TRADE.*—As used in section 498A(b)(5), the term “nonmarket based trade” includes exports, imports, exchanges, or other arrangements that are provided for goods and services (including oil and other petroleum products) on terms more favorable than those generally available in applicable markets or for comparable commodities, including—

(A) exports to the Cuban government on terms that involve a grant, concessional price, guaranty, insurance, or subsidy;

(B) imports from the Cuban government at preferential tariff rates;

(C) exchange arrangements that include advance delivery of commodities, arrangements in which the Cuban government is not held accountable for unfulfilled exchange contracts, and arrangements under which Cuba does not pay appropriate transportation, insurance, or finance costs; and

(D) the exchange, reduction, or forgiveness of Cuban debt in return for a grant by the Cuban government of an equity interest in a property, investment, or operation of the Cuban government or of a Cuban national.

(4) *CUBAN GOVERNMENT.*—(A) The term “Cuban government” includes the government of any political subdivision of Cuba, and any agency or instrumentality of the Government of Cuba.

(B) For purposes of subparagraph (A), the term “agency or instrumentality of the Government of Cuba” means an agency or instrumentality of a foreign state as defined in section 1603(b) of title 28, United States Code, with “Cuba” substituted for “a foreign state” each place it appears in such section.

* * * * *

SECTION 212 OF THE CARIBBEAN BASIN ECONOMIC RECOVERY ACT**SEC. 212. BENEFICIARY COUNTRY.**

(a) * * *

(b) In designating countries as “beneficiary countries” under this title the President shall consider only the following countries and territories or successor political entities:

| | |
|---------------------|--------------------|
| Anguilla | Dominica |
| Antigua and Barbuda | Dominican Republic |
| Bahamas, The | El Salvador |
| Barbados | Granada |
| Belize | Guatemala |
| Cayman Islands | Guyana |
| Costa Rica | Haiti |
| Cuba | Honduras |

| | |
|----------------------|----------------------------------|
| Jamaica | Saint Vincent and the Grenadines |
| Montserrat | Suriname |
| Netherlands Antilles | Trinidad and Tobago |
| Nicaragua | Saint Christopher-Nevis |
| Panama | Turks and Caicos Islands |
| Saint Lucia | Virgin Islands, British |

In addition, the President shall not designate any country a beneficiary country under this title—

(1) if such country is a Communist country;

* * * * *

TITLE 28, UNITED STATES CODE

* * * * *

PART IV—JURISDICTION AND VENUE

* * * * *

CHAPTER 85—DISTRICT COURTS; JURISDICTION

Sec.

1330. Actions against foreign states.

1331. Federal question.

1331a. *Civil actions involving confiscated property.*

* * * * *

§ 1331a. Civil actions involving confiscated property

The district courts shall have exclusive jurisdiction of any action brought under section 302 of the Cuban Liberty and Democratic Solidarity (LIBERTAD) Act of 1995, regardless of the amount in controversy.

* * * * *

CHAPTER 97—JURISDICTIONAL IMMUNITIES OF FOREIGN STATES

* * * * *

§ 1611. Certain types of property immune from execution

(a) * * *

* * * * *

(c) Notwithstanding the provisions of section 1610 of this chapter, the property of a foreign state shall be immune from attachment and from execution in an action brought under section 302 of the Cuban Liberty and Democratic Solidarity (LIBERTAD) Act of 1995 to the extent the property is a facility or installation used by an accredited diplomatic mission for official purposes.

* * * * *

INTERNATIONAL CLAIMS SETTLEMENT ACT OF 1949

* * * * *

TITLE V

* * * * *

EVALUATION OF OWNERSHIP CLAIMS REFERRED BY DISTRICT COURTS
OF THE UNITED STATES

SEC. 514. Notwithstanding any other provision of this title and only for purposes of section 302 of the Cuban Liberty and Solidarity (LIBERTAD) Act, a United States district court, for fact-finding purposes, may refer to the Commission, and the Commission may determine, questions of the amount and ownership of a claim by a United States national (as defined in section 4 of the Cuban Liberty and Solidarity (LIBERTAD) Act) resulting from the confiscation of property by the Government of Cuba described in section 503(a), whether or not the United States national qualified as a national of the United States (as defined in section 502(1)) at the time of the action by the Government of Cuba.

EXCLUSIVITY OF FOREIGN CLAIMS SETTLEMENT COMMISSION
CERTIFICATION PROCEDURE

SEC. 515. (a) Subject to subsection (b), neither any national of the United States who was eligible to file a claim under section 503 but did not timely file such claim under that section, nor any national of the United States (on the date of the enactment of this section) who was not eligible to file a claim under that section, nor any national of Cuba, including any agency, instrumentality, subdivision, or enterprise of the Government of Cuba or any local government of Cuba in place on the date of the enactment of this section, nor any successor thereto, whether or not recognized by the United States, shall have a claim to, participate in, or otherwise have an interest in, the compensation proceeds or other nonmonetary compensation paid or allocated to a national of the United States by virtue of a claim certified by the Commission under section 507, nor shall any court of the United States or any State court have jurisdiction to adjudicate any such claim.

(b) Nothing in subsection (a) shall be construed to detract from or otherwise affect any rights in the shares of the capital stock of nationals of the United States owning claims certified by the Commission under section 507.

* * * * *

DISSENTING VIEWS

The Cuban Liberty and Democratic Solidarity Act (H.R. 927) marks a radical shift in U.S. foreign policy. H.R. 927 is not a status quo bill, it is an extreme bill. It toughens the embargo against Cuba and tightens the noose on the Cuban people. It adopts measures against Cuba harsher than those against the Soviet Union during the Cold War.

A policy that increases the isolation of Cuba is the wrong policy. The most important Republican foreign policy figure of his generation—Richard Nixon—reached the same conclusion shortly before his death. President Nixon was not alone. Others opposed to further isolation of Cuba include former Secretary of State Lawrence Eagleburger and former National Security Adviser Zbigniew Brzezinski. The spectrum of those opposed to a policy of further isolation runs from William F. Buckley, Jr., to Oscar Arias, the former President of Costa Rica, to Havana's Catholic Bishops. It includes the editorial pages of the *New York Times*, the *Washington Post* and the *Wall Street Journal*.

The U.S. national interest in Cuba is clear. Our chief goal should be a peaceful transition in Cuba, to a democracy and market economy. A peaceful transition would reduce the chances of a massive migrant flow from Cuba to the United States. A successful transition would also enhance a second important U.S. interest—just compensation of those who had property confiscated by the Castro government.

H.R. 927 damages the U.S. national interest

H.R. 927 damages the U.S. national interest in four distinct ways:

First, by increasing Cuba's isolation, H.R. 927 will make conditions in Cuba much worse than they are today. That will hurt the Cuban people and will help Castro.

If we make conditions in Cuba more desperate, we increase the likelihood of violent change. We increase the chances of another mass exodus to the United States.

Second, H.R. 927 puts further isolation of Cuba at the center of U.S. foreign policy. It makes every other aspect of U.S. foreign policy subservient to that goal. No government in the world agrees with such a policy toward Cuba—and without the support of other governments, that policy cannot succeed. In the course of increasing Cuba's isolation, and seeking to force other countries to go along, H.R. 927 will:

Damage our relations with our closest allies, friends and trading partners, in Europe, Japan, Canada, and Mexico;

Violate the North American Free Trade Agreement (NAFTA), which guarantees the free movement of business travelers through North America; and

Undermine U.S. leadership at the World Bank and IMF by forcing the United States to withhold funds.

Third, H.R. 927 prohibits the United States from assisting any new government in Cuba as it makes the difficult transition to democracy.

The bill conditions the provision of any assistance to a transition government on compliance with all of the 18 conditions contained in title II.

While all of the conditions in the bill are valid, it is unlikely that any government in the world emerging from 36 years of totalitarian rule will be able to meet them.

This bill ensures that the United States will sit on the sidelines during the transition.

Fourth, H.R. 927 creates a brave new world of bureaucratic and legal red tape, with counterproductive results:

The bill's sugar provisions address a problem—third-party exports of Cuban sugar to the United States—that doesn't exist. It burdens the U.S. Customs Service with additional monitoring requirements that will detract from its ability to carry out other important public health and safety functions, including intercepting contraband, particularly narcotics, and deterring the illegal export of sensitive technology. Other countries, in turn, may retaliate against U.S. exporters.

It is a litigation magnet. It will tie up U.S. courts for years to come because it creates an entirely new right to sue that is likely to attract thousands of lawsuits.

It vastly complicates the visa issuance process by establishing an unenforceable new criterion—trafficking in confiscated property of U.S. nationals—for exclusion of aliens. Consular officers will be asked to make visa decisions in absence of authoritative or reliable information about such property transactions.

Title II: Assistance to a Transition Government

The concept behind title II of the bill is on target. The Cuban people need to know the United States stands ready to assist them in what will be a difficult transition from communist rule to a democracy. The United States should be preparing now for such a change in Cuba.

The rigidities of title II, however, undermine its purpose. The terms and conditions mandated in Title II would freeze the United States out of helping the transition once it begins. They would prevent the President from providing assistance to a transition in Cuba until that transition is complete.

The bill's criteria for a transition government or a democratically-elected government are laudable and should be weighed carefully in any decision to providing assistance to Cuba. But as we have seen in Eastern Europe and the former Soviet Union, the transition to democracy can be a long and painful process. The institutions essential to democracy are often entirely absent initially and must be built from the ground up.

Instead of rigid conditions, we need a framework to ensure that the United States can act, not just watch, when change comes to Cuba.

The President needs to be able to respond to positive change quickly during a messy political transition.

We need to preserve bench marks to help determine whether fundamental change has truly taken place in Cuba, but we must also allow the President to act before each of the bill's 18 conditions are met.

Title III—Property Rights

Our concern with H.R. 927 is not whether someone is a U.S. citizen or when someone becomes a U.S. citizen. Our concern is that this bill creates a special right to sue in U.S. courts that is available only to those who have lost property in Cuba. We do not believe that those who lost property in Cuba are more deserving than those who lost property in Germany, Eastern Europe, Vietnam, or Russia.

U.S. policy should balance three distinct interests:

Protecting the rights of all Americans with property claims in Cuba;

Protecting the interests of American investors worldwide; and

Helping the economic viability of a post-Castro, democratic Cuba.

H.R. 927 does not advance the first, and does clear harm to the other two interests.

First, this bill will damage the interests of Americans with existing property claims in Cuba, without guaranteeing fair compensation for the new claimants it would create.

This bill undermines current certified claims for Cuban property because it moves the claims settlement process into federal court. The Cuban Government will be reluctant to work out any agreement on certified claims if U.S. courts are simultaneously considered lawsuits on the same or related properties.

This bill invites anyone who has had property confiscated in Cuba over the past 35 years—whether a U.S. citizen or not—to rush to incorporate in the U.S. and file a lawsuit in U.S. federal courts. A legal free-for-all will result. Compensation will go to those with the best lawyers who file suits against the defendants with the deepest pockets. Limited resources available for compensation will be quickly depleted with little view toward equitable distribution among the entire claimant pool.

By creating a new right to sue, the bill undermines the ability of the U.S. Government to ensure that the interest of all Americans will be fairly represented.

To address expropriated property issues, existing law (section 527 of Public Law 103–236, the Foreign Relations Authorization Act, Fiscal Years 1994 and 1995) already conditions U.S. assistance to a new Cuban Government on the implementation of an effective claims-settlement system.

U.S. policy is to press future Cuban governments to return or provide compensation for properties expropriated from any American, regardless of when they became a U.S. citizen.

Second, this bill will make it harder to protect the property rights of Americans around the world. By creating a special right

to sue for U.S. citizens or corporations that lost property in Cuba, the bill turns existing international law on its head.

U.S. investments worldwide would be in jeopardy if other countries follow our lead and allow their nationals and companies to sue in their courts for property in their countries. American investments in disputed properties—throughout the former communist bloc, for example—would be at risk if the principles in this bill become accepted international practice.

If the practice for Cuban property claims in this bill were followed elsewhere, no bilateral property agreement would be safe from subsequent litigation.

Finally, the legal uncertainties created by this bill damage Cuba's prospects for a successful transition to democracy and a free-market system. Because investors could never be sure whether a piece of property had been, or could be, claimed by a U.S. citizen—or by someone who has incorporated in the United States—they will be skittish about making financial commitments.

Helping Cubans build a democratic government and a free-market economy will be the top priority for the United States in the post-Castro environment.

Cuba's future economic success will depend critically upon new foreign and domestic investment. Yet a declining foreign assistance budget means that U.S. government assistance to Cuba will be limited.

In sum, Title III will not solve problems—it will simply create more problems. It will not compensate those who have lost property in Cuba. It will jeopardize existing certified claims for Cuban property. It will also jeopardize U.S. claimants and investors elsewhere in the world.

Title IV—Visa Restrictions

Title IV of H.R. 927 will not work.

Title IV will require every U.S. consular officer to ask new questions of every visa applicant everywhere in the world. Title IV is not limited to Cuban property issues—it applies to property issues worldwide. A consular officer will have to ask all visa applicants:

Have you every bought property?

Can you prove that the person you bought it from did not confiscate it from someone else?

Can you prove that the person they bought it from did not confiscate it from someone else?

Are you a principal shareholder in a company that owns property? If so where is it, who owned it before, and can you prove it wasn't confiscated?

The questions go on and on. No matter what the answers, the consular officer will have no basis for evaluating the information provided—and no ability to enforce the law.

In the case of visa-waiver countries—most countries in Western Europe, as well as Canada and Japan—the burden of determining property ownership would be on the Immigration and Naturalization Service (INS) at every point of entry into the United States.

The INS is currently overwhelmed by its task of keeping illegal aliens from entering the United States. H.R. 927 will force the overburdened INS to spend its time looking at reams of financial

information—which it has no ability to evaluate. H.R. 927 will take INS and consular officers away from their real jobs—preventing terrorists, drug traffickers, and felons from getting visas, and ensuring that illegal aliens do not enter the United States.

Title IV is so broadly written that it would capture entirely innocent people. People who may have followed all applicable local laws when investing or purchasing property could be punished for actions taken by others over 30 years ago that they are entirely unaware of.

Title IV also violates NAFTA and the Uruguay Round Trade Agreement, which allow countries to restrict business travel only for public health and national security reasons.

This is not a theoretical concern. If this provision were enacted, an executive for a Canadian company could be barred from entering the United States because his or her company had some involvement with confiscated property in the 1960s—perhaps before the executive was born. The Canadian and Mexican Governments consider this provision to be a violation of NAFTA, and have said they will initiate dispute-settlement proceedings against the United States if it is enacted.

This provision could also inspire trade and immigration retaliation that hurts U.S. exports and jobs. Countries with protectionist tendencies will welcome a new rationale for keeping U.S. business and exports out of their country.

A Policy of Engagement, Not Isolation

We all agree that Castro must go. We all agree that Cuba must make the difficult transition to democracy and free markets. The question is how to achieve that goal and advance the U.S. national interest. We believe the choice is clear: We should engage the Cuban people to bring about a peaceful transition, rather than increase their isolation and hardship in the hope of igniting a violent confrontation.

A policy of contact, dialogue, and exchange with Eastern Europe and the former Soviet Union helped foster a democratic revolution. A new generation in Eastern Europe saw that the world could be different, and they made their world different.

Those who favor increased isolation of Cuba have a responsibility to explain why the engagement that helped kill communism in Eastern Europe and the Soviet Union should *not* be the hallmark of our policy toward Cuba.

Throughout the past 36 years, Castro has used two mechanisms to relieve pressure on his regime—letting his people take to the seas and appealing to Cuban nationalism. This bill hands Castro a fresh deck of nationalist cards. He is already playing his hand. In recent weeks, Castro has been travelling the island using this bill to justify his practices. This bill, he says, proves that exiled Cubans want to turn the clock back to 1958.

The message should be clear to all: this bill gives Castro new scapegoats to distract the Cuban people from their real problem: Castro's authoritarian system.

We should not hand Castro more excuses. A transition in Cuba is already beginning. Economic reform, forced by the end of Soviet subsidies, has given a small but growing number of Cubans eco-

nomic independence for the first time in 36 years. The Catholic Church is playing an increasing role. Small groups of Cuban citizens are gathering to discuss life after Castro. U.S. policy should build on these first signs of change—to engage, encourage and accelerate change, not stifle it through a policy of isolation.

Conclusion

H.R. 927 increases the likelihood that political change in Cuba, when it comes, will not be peaceful, but violent.

H.R. 927 puts at risk U.S. relations with Canada, Mexico, Japan, and our closest allies in Europe in an effort to increase Cuba's isolation.

H.R. 927 creates an administrative and legal nightmare, for the U.S. Customs Service, the U.S. court system, and U.S. consular officers everywhere.

H.R. 927 is an extreme bill that damages the U.S. national interest.

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